Nos. 17,878 and 17,879

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 17,878

GEORGE RAMSEY; LEON NUNLEY, d/b/a LEON NUNLEY COAL COMPANY; PAUL GIBBS, d/b/a PAUL GIBBS COAL COMPANY; LOIS HALL TRAVIS, Administratrix of the Estate of W. J. Travis and J. H. GRAHAM, d/b/a NINTH WEST COAL COMPANY; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G COAL COMPANY; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Administratrix of the Estate of W. J. TRAVIS, d/b/a M & T COAL COMPANY; STEPHENSON BROTHERS COAL COMPANY, INC.; EDWARD NUNLEY, d/b/a EDWARD NUNLEY COAL COMPANY; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a TRACY CITY COAL COMPANY; HENRY WILLIS FLYNN, d/b/a WILLIS FLYNN COAL COMPANY; H. W. FLYNN COAL COMPANY, INC.; HOWARD HIGGINS, d/b/a HOWARD HIGGINS COAL COMPANY; HOWARD HIGGINS COAL COMPANY, INC.; MARSHALL MEEKS,

Plaintiffs-Appellants,

v.

UNITED MINE WORKERS OF AMERICA,

Defendant-Appellee.

No. 17,879

TENNESSEE PRODUCTS AND CHEMICAL CORPORATION,

Plaintiff-Appellant,

v.

UNITED MINE WORKERS OF AMERICA,

Defendant-Appellee.

Appeals from Final Judgments of the United States District Court for the Eastern District of Tennessee, Southern Division

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APPENDIX FOR DEFENDANT-APPELLEE

VOLUME II

Pages 449b-896b

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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APPENDIX FOR DEFENDANT-APPELLEE

TABLE OF CONTENTS OF APPENDIX

Excerpts From Transcript of Proceedings

Volume I

Witnesses for Plaintiffs

	Page
Paul Gibbs—	
Direct examination	2b
Cross examination	12b
Leon Nunley—	
Direct examination	29b
Cross examination	33b
Edward Nunley—	
Direct examination	38b
Proceedings	39b
Edward Nunley—	
Cross examination	40b
John Stephenson—	
Direct examination	46b
Cross examination	56b
Recross examination	69b
J. H. Graham—	
Direct examination	72b
Cross examination	77b
W. T. Morrison—	
Direct examination	90b
Cross examination	96b
Recross examination	122b
Howard Higgins—	
Direct examination	125b
Proceedings	134b
Howard Higgins—	
Direct examination	135b
Cross examination	136b
Redirect examination	162b
Willis Flynn—	
Direct examination	162b
Cross examination	169b
Redirect examination	185b

Herschel A. Daffron—
Direct examination ---------- 186b
Cross examination ---------- 194b
Recross examination ---------- 215b
Redirect examination ---------- 216b

Walter Frizzell—
Cross examination ---------- 217b

John Waller—
Direct examination ---------- 231b
Cross examination ---------- 232b

John H. Basham—
Direct examination ---------- 232b

Clarence McGowan—
Direct examination ---------- 233b

Ernest Campbell—
Direct examination ---------- 235b

Tommy Cates—
Direct examination ---------- 235b
Cross examination ---------- 239b
Redirect examination ---------- 242b

Proceedings ---------- 242b

Virgil C. Thomas—
Direct examination ---------- 244b

Proceedings ---------- 251b

Virgil C. Thomas—
Direct examination ---------- 255b
Cross examination ---------- 255b

Max Condra—
Direct examination ---------- 258b

Murphy Whited, Jr.—
Direct examination ---------- 267b
Cross examination ---------- 267b

Proceedings ---------- 268b

Cyrus S. Eaton—
Direct examination ---------- 270b

Mark Eastin—
Direct examination ---------- 272b
Cross examination ---------- 277b

Merle C. Kelce—
Direct examination ---------- 278b
Cross examination ---------- 279b

Proceedings ---------- 283b

John L. Lewis—
Direct examination ---------- 287b

J. C. Kelley—
Direct examination ---------- 291b
Cross examination ---------- 292b

Thomas L. Feazell—
Direct examination ---------- 294b

Carl McFarlin, Jr.—
Direct examination ---------- 295b

Herman I. Allen—
Cross examination ---------- 322b

Carl McFarlin, Jr.—
Cross examination ---------- 334b
Redirect examination ---------- 375b

Rolland O. Baum—
Direct examination ---------- 376b

Proceedings ---------- 388b

Rolland O. Baum—
Direct examination ---------- 390b
Cross examination ---------- 399b
Redirect examination ---------- 420b

Paul V. Callis—
Direct examination ---------- 421b

Proceedings ---------- 427b

Paul V. Callis—
Direct examination ---------- 429b

Volume II

Paul V. Callis—
Direct examination (continued) 449b
Cross examination 457b

Houston Beaumont—
Direct examination 540b
Cross examination 551b

William B. Allison—
Direct examination 566b
Cross examination 569b

William von Meding—
Direct examination 575b
Cross examination 581b
Recross examination 592b

Perceival Henry Fitzgerald—
Direct examination 596b
Cross examination 622b

Marshall Meeks—
Cross examination 628b
Redirect examination 634b

Lon Shelton Varnell—
Direct examination 634b
Cross examination 638b

Max Condra—
Redirect examination 645b

Joseph Howard Graham—
Recross examination 645b

George Ramsey—
Direct examination 647b
Cross examination 655b

Defendant's Motions; Proceedings 622b

Defendant's Motions to Strike Evidence, and for Judgment; Proceedings 665b

Witnesses for Defendant

W. A. Boyle—
Direct examination 691b

John Owens—
Direct examination ---------- 701b
Cross examination ---------- 705b

John L. Lewis—
Direct examination ---------- 717b
Cross examination ---------- 724b

Josephine Roche—
Direct examination ---------- 733b

Proceedings ---------- 736b

Josephine Roche—
Direct examination ---------- 738b

Val J. Mitch—
Direct examination ---------- 745b

George H. Love—
Cross examination ---------- 753b

P. B. C. Smith—
Direct examination ---------- 754b

E. C. Hill—
Direct examination ---------- 781b
Cross examination ---------- 787b
Direct examination ---------- 797b
Cross examination ---------- 800b
Redirect examination ---------- 814b

Howard Cecil Human—
Direct examination ---------- 819b

Roland A. Kampmeier—
Direct examination ---------- 830b
Cross examination ---------- 908b
Redirect examination ---------- 921b

L. C. Goering—
Direct examination ---------- 923b
Cross examination ---------- 931b

C. M. Hicks—
Direct examination ---------- 935b
Cross examination ---------- 966b
Redirect examination ---------- 966b

J. W. McMahon—
Direct examination ---------- 871b

Volume III

J. W. McMahon—
Direct examination (continued) 897b

T. J. Hoffman—
Direct examination 984b

Mark E. Eastin—
Direct examination 1011b

T. J. Hoffman—
Direct examination 1036b

Mark Eastin, Jr.—
Direct examination 1041b

S. L. Jewell—
Direct examination 1044b

T. Reed Scollon—
Direct examination 1062b

C. Edwin Ross—
Direct examination 1088b

Allen Condra—
Direct examination 1095b

George Gilbert—
Direct examination 1100b
Cross examination 1127b

Howard Madewell—
Direct examination 1130b

Albert Pass—
Direct examination 1170b
Cross examination 1210b

William J. Turnblazer—
Direct examination 1224b
Cross examination 1282b
Redirect examination 1284b

Mark Eastin, Jr.—
Direct examination 1285b

Excerpts From Annual Reports of TVA 1286b

Louis E. Wolfson—
Direct examination 1292b

Excerpts From Minutes of Tennessee Consolidated Coal Company ---------- 1311b

Edward Nunley—
Cross examination ---------- 1314b
Proceedings ---------- 1314b

William Turnblazer—
Direct examination ---------- 1315b

Defendant's Motions to Strike Evidence, and for Judgment; Proceedings ---------- 1316b

Proceedings ---------- 1317b

EXHIBITS

Number Description Page

Excerpts from:

D125 Proceedings of Conventions of the United Mine Workers of America, Year 1934 ---------- 1321b

D126 Proceedings of Conventions of the United Mine Workers of America, Year 1936 ---------- 1327b

D129 Proceedings of Conventions of the United Mine Workers of America, Year 1942 ---------- 1330b

D130 Proceedings of Conventions of the United Mine Workers of America, Year 1944 ---------- 1331b

D131 Proceedings of Conventions of the United Mine Workers of America ---------- 1331b

D132 Proceedings of Conventions of the United Mine Workers of America, Year 1948 ---------- 1332b

D133 Proceedings of Conventions of the United Mine Workers of America, Year 1952 ---------- 1334b

D135 Proceedings of Conventions of the United Mine Workers of America, Year 1960 ---------- 1335b

D375 Report on the Work of the National Defense Mediation Board, March 19, 1941—January 12, 1942 ---------- 1337b

D438 List of Alleged Co-Conspirators ---------- 1338b

mind and let the members that worked in the mine discuss it, and a date was set to meet in Chattanooga later.

Q. And what date did you meet in Chattanooga, do you recall?

A. February the 25th. I recall it was a very few
2705 days later.

Q. All right. Now, who was present at Chattanooga?

A. Mr. Rowntree, I think basically the same group that met in Knoxville. I am not sure that Mr. Ridings was present his health was not the best. I think other than that the same group.

Q. Do you recall or do you have any notes of that?

A. No, sir, I don't.

Q. Do you recall what took place at that meeting?

A. A discussion mainly on productivity demanded of the contract to supply TVA. Company officials explained to the union officials what TVA was expecting of both of us and that we had to arrive at certain basic understandings to where we would get out of the category of being an undependable supplier from these work stoppages.

So the meeting went on to discuss setting up a productivity schedule of approximately 15 tons per man for the United Mine Workers scale of wages. It was understood the 40 cents and the vacation pay. The scale of wages would be opposite 15 tons per man as provided in the contract. If the provided productivity dropped to, say, 12 tons per man, the hourly rate would drop, the rate would remain the same but the take-home pay would drop proportionately. If the productivity increased to 16 tons per man, the take-home pay would be increased over and above the wage
2706 scale to compensate for any loss that might have occurred by a drop in productivity.

Q. All right. Did any agreement come out of that meeting?

A. No, sir. One, to meet again, to meet further in Palmer.

Q. I show you a copy of a letter and I will ask you if that letter was sent by the company to Mr. Ridings.

A. Yes, sir.

Q. Does that letter express the essence of the meeting in Chattanooga?

A. Yes, sir.

Q. Will you read that, Mr. Callis?

A. This letter is on Tennessee Consolidated official stationery dated March 16, 1960.

"Mr. J. W. Ridings, President, District 19, United Mine Workers of America, Middlesboro, Kentucky.

"Dear Mr. Ridings:

"This is in reply to your letter of March 12, 1960. At our meeting in Chattanooga on February 25th, 1960, you were again advised that Tennessee Consolidated Coal Company would be compelled to go out of the mining business unless a contract with the United Mine Workers of America and the company could be worked out. It would, of necessity,
2707 be somewhat different from the National Bituminous Wage Agreement so as to solve the problem peculiar to our local area.

"You stated that the United Mine Workers of America would not consider anything except the national wage agreement. You were then told that Tennessee Consolidated could no longer continue in the mining business under these circumstances.

"We are ready and willing to sign the National Bituminous Wage Agreement provided an agreement can be reached covering our local situation.

"The Tennessee Consolidated Company again requests that you meet with its representatives to work out such an agreement.

"Yours truly. Everett Roberts, Vice President."

A copy to Mr. Stanlee Hampton, President, Nashville.

Q. Did you attend the Palmer meetings?

A. Mr. Rowntree, I believe there were two meetings and I attended one of them.

Q. Who was present at that meeting?

A. Sir?

Q. When did that occur, that meeting?

A. Shortly after the Chattanooga meeting. As to the exact date, I don't recall.

Q. All right. Who was present?

2708 A. The members of the Palmer local, Mr. Roberts, Mr. Everett Roberts, Jr., Mr. Beaumont, myself at one meeting, not at the other, and Mr. George Gilbert was there and Mr. Manley Edwards was there.

Q. From the district?

A. Sir?

Q. From the district?

A. Yes, sir. And members of the—official members of the Palmer local who worked for the company.

Q. All right. What was the purpose of that meeting and what occurred at that meeting?

A. The purpose was to further discuss working out a contract that we could produce coal under with the union.

Q. Anything come out of that meeting?

A. We thought at first that it had. We discussed the 15 tons, the productivity contract sliding scale up and down. Mr. Manley Edwards advised with the local committee. We met and then they advised again, you know, we had had a recess and then he came in and said, "I have to be going up the road. I think you are making progress. I think you are on the right track and I will call back and see how you make out. I think you boys can work this out."

Q. Did they work it out in that meeting that you were in?

A. We thought we did. He called back and we
2709 thought we did but nothing ever materialized. I think it was Mr. Schrum who said, "It will be the National Bituminous Wage Agreement or nothing."

Q. Was a date set for another meeting?

A. Not at that time.

* * * * * * * * * *

Q. What production was going on on your property after March of 1960 with respect to any violence?

A. Whitwell Coal Company strip and auger operation continued.

* * * * * * * * * *

2710 Q. Do you recall in the summer of 1960 a meeting at Murfreesboro?

A. Yes, sir.

* * * * * * * * * *

2712 Q. Now, Mr. Callis, you mentioned Grundy Mining Company. What was that company?

2713 A. After Tennessee Consolidated had failed to be successful with the T4 contract and in turn had canceled the contract with the United Mine Workers and also had been informed by the owners or stockholders that they could not mine coal without making a profit, it was suggested and discussed and decided to separate Tennessee Consolidated Coal Company entirely from the mining business and to have an operating company owned by Consolidated, which was Grundy Mining Company, and that was adopted by the Board of Directors at that time and established and chartered.

Q. Was this a wholly owned subsidiary of Tennessee Consolidated?

A. Yes, sir.

* * * * * * * * * *

Q. Let me ask you this, Mr. Callis: After the Murfreesboro meeting where did you go?

A. Back to Nashville.

Q. Did you come back to the coal field at some later time?

A. The next day.

Q. And what happened that day?

2714 A. I went from the Tracy City office to the Palmer

office with Mr. Bill Allison, then acting treasurer of the company, to have a business meeting with Mr. Everett Roberts at the Palmer office.

After the meeting we walked over to the commissary to have a Coca-Cola. As we departed the commissary I was confronted, we were confronted, Mr. Allison and myself were confronted with a group of men numbering, I would guess, a hundred to 125. Whereupon Mr. Marvin Lee Gary accosted me and used the most vile language I have ever heard in my life.

Q. Who is Mr. Gary?

A. Mr. Gary is a member of the union.

Mr. Combs: We object to that testimony and any testimony of that character without identifying them as being a representative of the union in some manner.

The Court: Well, overrule the objection.

Mr. Combs: May I have a continuing objection to answers of that character?

A. Mr. Gary grabbed my right arm. Mr. Allison pivoted off my left arm and we stood back to back knowing and seeing guns in the crowd.

We were told to get the hell out of Palmer. We proceeded straight through the crowd, walking, got in our car, closed the door. As we started to back or go forward a
2715 pickup truck driven by Mr. Clarence McGovern pulled directly in front of our car to block the way, wherein Mr. McGovern got out of the truck and brought a carbine down at my face through the windshield and pointed it at me through the windshield in this automobile.

We remained calm, realizing that the situation was tense, and slowly backed out into the main highway and drove out of town.

Q. Did you see Mr. Paul Gibbs that day or shortly thereafter?

A. Later that night Mr. Allison and I met with Mrs. Gibbs to exchange Mr. Gibbs from her car to our car because

there had been several bands of cars and men threatened and traveling through the county there.

We spent most of the night moving about the area of Tracy City, Monteagle, waiting until dawn with Mr. Gibbs on the floor of the car.

At dawn we drove Mr. Gibbs at his instructions to Mr. Herman Sanders' house where he remained for two or three days.

Q. After these incidents, Mr. Callis, was a picket line maintained?

A. Yes, sir.

Q. Where was this maintained?

A. Both at the Coal Valley Road and the junction
2716 of what we refer to as the Dogwood Flats, the Pocket Road.

Q. Do you recall how long that line continued there?

A. On through Christmas, into 1961.

Q. Was your property still shut down at the end of 1960 with respect to the Coal Valley Mine and the truck mine?

A. Yes, sir.

Q. What did you do or what did the company do in 1961 at the beginning of the year or early part of the year?

A. At the Board of Directors meeting at the end of the year management was instructed to select a consulting engineering firm of reputation to come in and survey the situation with respect to: Can coal be produced from this seam of coal with whatever machinery was necessary? And have them to recommend the machinery to produce the coal with this machinery under the National Bituminous Wage Agreement.

Whereupon, management on April 4th signed the contract in the offices of Mr. W. D. Spears in Chattanooga. Company representatives were Mr. Everett Roberts and Mr. Stanlee Hampton who signed the contract with Allen and Garcia Company.

Q. This company, did it have the prime responsibility from that point over into 1962 for coal production?

A. Yes, sir.

* * * * * * * * * *

2727 Q. Was there a period of time when you had no interferences in towards the end of 1962 there?

2728 A. Yes, sir.

Q. What was going on then?

A. October 23rd, I think, or 24th, to December 26th of '62.

Q. What was taking place during that period of time?

A. We started negotiations in Chattanooga here through the Sewanee Coal Operators Association negotiating, to attempt to negotiate a contract with United Mine Workers.

Q. Was Tennessee Consolidated Coal Company a member of that organization?

A. No, sir.

Q. Was Grundy Mining Company a member of that association?

A. No, sir.

Q. Who made up the membership of the Sewanee Coal Operators Association?

A. To the best of my knowledge it was made up by all of the small truck mine operators in the area. As to exactly who they were, I don't know, but it was a very high percentage of the small truck mine operators.

Q. Now, at the end of December what took place with respect to the operation of Grays Creek No. 11?

A. On the morning of December the 26th, Mr. Gene Poore, the superintendent, notified me that the workers demanded that I agree to cut the dues, the union dues,

2729 from their pay and remit to the district office or to the union. I think that is the way it was.

I informed Mr. Poore to inform the men that I had no legal contractual right to tamper with their pay check, but that I would be delighted, if they wanted to sign an au-

thorization for a cut, I would be delighted to cut the money and put it into one check for them and let them remit it.

* * * * * * * * * * *

2732 Q. With respect to the incident that occurred in late December or the early part in 1963, state any instances that you observed or what was going on at that time?

A. Grundy Mining Company was opening several small mines in the Grays Creek area with some new operators and some of the old ones on foremen agreements that they hired and had the men work as foremen, then assigned to them lease option agreements after they got the mine developed.

These men were completely exhausted of funds and Tennessee Consolidated Coal Company agreed to advance the money for the development of the to the mine and then if the foreman wanted to exercise his option he could then take it over and repay the company for the capital investment as he produced the coal.

Q. On a tonnage basis?

A. On a tonnage basis without interest.

Q. Were Higgins and Flynn two of these foremen who later became operators under that option?

A. Yes, sir.

Q. Now, does Tennessee Consolidated have an interest in Mr. Higgins' operation there in Grays Creek?

A. Yes, sir.

Q. Will you describe how that developed?

A. We, the management of Tennessee Consoli-

2733 dated, the active management, Mr. Beaumont, Mr. Allison and myself, in endeavoring to introduce incentive, both to the worker as well as the operator, and to upgrade the quality of mine that we have on our property, we created a corporation known as Walnut Coal Company and have installed rubber tired mobile drop bottom cars, recently installed, more recently installed conveyor belts and this mine is run on an incentive basis with

the coal miner and we own 51 per cent of the stock of the corporation and Mr. Howard Higgins owns the 49 per cent.

The reason for that differential is there we run into situations with government contracts and also the ownership of equipment, that is why the separation.

Q. I don't quite understand that, Mr. Callis.

A. Well, for instance, rather than have an argument over our having—you can't very well involve corporate funds and become involved in a coal mine without having one boss, so it was decided on a 51-49 per cent basis, that it was agreed the company definitely was the boss of the mine as far as the ownership was concerned. The direction of the work force, however, is Mr. Howard Higgins.

Q. Does he draw a salary?

A. He draws a salary from that corporation.

Q. Is this a hand loading operation?

A. Yes, sir.

2734 Q. Who keeps the books on that?

A. The books are kept at Tracy City by the treasurer of Tennessee Consolidated.

Q. Is that Mr. Allison?

A. Mr. Allison.

Q. Does he also keep the books on No. 11 Mine?

A. Yes, sir.

2739 CROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Callis, in your experience in the coal business since 1945, I take it that you have seen the TVA become the largest purchaser of coal in that area, have you not?

A. Yes, sir.

Q. Did you sell the TVA any coal when you first started with Tennessee Consolidated in 1946?

A. No, sir.

Q. That is, did your company do so?

A. To my knowledge we did not.

Q. When do you recall that Tennessee Consolidated sold any of its coal to the TVA?

A. I believe some coal was sold prior to 1950 to Hale's Bar, small quantities. The first coal that I know that
2740 our company contracted for was the contract 259 or the contract for 20 thousand tons of carbon coal and 80 thousand tons of screenings, I think 1950.

Q. Two?

A. Two.

Q. Now, you saw that account, that is, your account with the TVA grow rather substantially, did you not?

A. Yes, sir.

Q. When I speak of "your coal", I am speaking to the coal that is not only mined directly by your company but also mined by your sub-lessees and sold by your company. Now, considering your coal in that light, to what size did your account with TVA grow, what has been your experience through the years?

A. I would answer that from the first contract of, say a hundred thousand tons a year up to a maximum annual contracted tonnage, I am not saying that we delivered this, but maximum contracted tonnage for our properties, the coal moving from our properties from all operations into the TVA market, Mr. Rayson, from 2 thousand tons a week up to 13 thousand tons a week.

Q. And did this by and large continue until you closed the Coal Valley Mine at the end of 1959?

A. At the end of 1959, we had 9,000 tons under
2741 contract.

Q. Per week?

A. A week.

Q. During most of this period I believe you kept pace with the industry, didn't you?

A. With respect to—

Q. (Interposing) Your ability to compete.

A. Productivity-wise or—

Q. (Interposing) Profit-wise.

A. No, sir.

Q. You didn't keep pace?

A. No, sir, not profit-wise.

Q. You have heretofore testified on oath that you kept pace with the industry.

A. We kept pace with the industry in mechanizing and productivity-wise.

Q. You have been over the years one of the spokesmen for your company, haven't you?

A. Spokesman in sales since 1957, spokesman as chief executive officer since 1961.

Q. And as spokesman you have been a rather outspoken critic of the TVA and its coal purchasing policies, have you not?

A. It depends on what phase or just exactly what part you are referring to. I am not ducking your question, but you have made a pretty broad statement.

2742 Q. Well, let me ask you this: Have you had occasion to criticize the TVA's coal purchasing policies?

A. Yes, sir.

Q. And in what way have you criticized those policies?

A. To break it down into two categories, in the evaluation formulas, which involves the correlation of the qualities of coal applied to transportation cost and mine price cost, and in their method used in sampling.

Q. Their sampling methods?

A. Yes, sir.

Q. Well, speaking a little more broadly than that, Mr. Callis, haven't you contended that the TVA has deliberately used its volume purchase position to break the prices of coal in this area?

A. No, sir, I wouldn't say that.

Q. And haven't you also stated that the TVA has utilized

its position of strength as a large purchaser of coal to induce destructive competition?

A. Destructive competition in the sense of not recognizing the variations and conditions encountered in the different seams of coal in the country.

Q. Haven't you stated that your company was the victim of an economical bond primarily brought on by automation and the impatience of TVA?

A. That would be one way of describing it at a
2743 particular—

Q. (Interposing) Haven't you said that, Mr. Callis?

A. Well, I couldn't swear that I said it. If it is a letter or a statement that I have made, I am perfectly willing to own it, but when was it said and in what circumstances?

Q. You were the representative of your company in 1960 or 1962 at a hearing before the Interstate Commerce Commission, were you not?

A. Yes, sir.

Q. Did you not submit to the Interstate Commerce Commission a sworn statement in accordance with the rules of the Commission?

A. If that is my sworn statement I will stand by it.

Q. Or, let me show you this and ask you if this isn't a sworn statement you submitted in connection with the ICC hearing in the early Sixties.

A. Yes, sir, this appears to be the statement I made.

Mr. Rayson: Your Honor, I would like to introduce that as an exhibit to Mr. Callis' testimony.

The Court: Exhibit No. 288.

(The statement referred to above was marked D288 and received in evidence.)

2744 Mr. Rayson: I desire to read from this statement, your Honor. I will start on page 2.

I might ask a few questions about this first so that it will appear to the Court in a little better perspective.

Q. In 1960, as I understand it, Mr. Callis, the TVA ne-

gotiated a reduced Section 22 rate from the western Kentucky fields to the Widow's Creek Steam Plant, is that correct? I say, in 1960, the TVA negotiated a reduced Section 22 rate from the western Kentucky fields to the Widow's Creek Steam Plant, is that correct?

A. Yes. I know what you are talking about, but the Section 22 rate, a Section 22 rate is not negotiated by one party. Who did they negotiate with? When you make the statement I can't say yes.

Q. With the L & N.

A. Yes.

Q. And you complained, that is, your company and Tennessee Products complained about that rate, is that correct?

A. Yes, sir.

Q. And you and Tennessee Products instituted a proceeding before the Interstate Commerce Commission whereby you hoped to have that rate nullified?

A. Yes, sir.

2745 Q. And it was in connection with that proceeding that you submitted this verified statement, which is Exhibit 288, on or about March 28, 1962?

A. Yes, sir.

Mr. Rayson: Your Honor, reading from page 2 of that statement:

"Our mechanized operations kept pace with the national productivity average for deep mines. In southern Tennessee we are generally unable to strip coal with surface operations because of overburden thicknesses. The loading machine feature of automation eliminated the hand shovel."

Continuing on page 2:

"The Tennessee Valley Authority's coal buying program from 1951 to 1956 was criticized with forcing mines to sell coal at below cost; that TVA's buying methods forced cut wages; that TVA was purposely running certain of its plants below capacity, and replacement power was being

transmitted from plants where the delivered cost of coal was cheaper."

The witness then on page 4 of his verified statement commented on some statements which had been published by the Tennessee Valley Authority in certain of their reports, and in commenting, the witness, Mr. Callis, made the following statement:

"I wish to comment on the above statement by
2746 TVA in the light of Witness Glan's statement concerning price fixing and my own experience in this field. TVA does set the price of coal it buys from us as I shall show. First we must consider that Section 22 rates charged the United States are left to private negotiations between the Government and the railroads, and that having fixed a rate from West Kentucky mines to Bridgeport, Alabama; the TVA then negotiates a mine price as low as it can get, resulting in a delivered price which we must meet on term bids. Ordinarily our field should establish the price at Widow's Creek since we are right at the back door of the TVA plant. And even though we are thin-seam operators with higher costs than western Kentucky thick seams, under a normal and fair rate structure we still would be considered as the base group."

At page 7 of the report or of the verified statement:

"From 1951 to the time of this TVA report, coal operators and railroad officials have vigorously battled to secure TVA tonnage. The Illinois coal field on the CE&I, NYC and Burlington Railroads battled with West Kentucky coal operators on the Illinois Central Railroad over supplying the Shawnee Plant. This fight has resulted in a downward spiral of rates and cutting prices. American Coal Sales Association officials met with the Board of Directors
2747 of TVA, hopeful of stopping such destructive competition. However, the more the coal industry spokesmen complained, the more TVA used its volume purchasing power to obtain preferential rates and charges, accented on

destination competitive bidding for volume business without regard to the mine group relationships established and maintained by the Interstate Commerce Commission."

At page 9:

"TVA says it recognizes that adequate wages and good working conditions are necessary for stable labor relations and efficient production. The facts are that in southern Tennessee, TVA through its purchases on a destination evaluated basis using negotiated rates, has put a ceiling on delivered prices for coal purchased at Widow's Creek. This was accomplished by pitting carrier against carrier and carrier against barge, to develop sub-normal delivered prices through uncontrolled transportation competition. Mr. Kendall, president of the L & N Railroad, with his assistant, Mr. Keister, headed the Widow's Creek—Colbert-Gallatin rate negotiations with TVA. As soon as the contracts were firm Mr. Keister resigned from the L & N to personally operate the rail-to-barge transfer terminals at Florence, Alabama. It might be of interest to show who the owners and vested interests are in 'Transportation Services, Inc.,

O. B. Keister, Jr., President.' This transportation
2748 is now moving coal from mines in the most highly productive coal fields in the world to these two plants at Widow's Creek and Colbert on privately negotiated sub-normal rates. Human nature being what it is, one either hangs on hoping for a break or else gives up. Many operators in southern Tennessee reached such a point of desperation, they presented the problem to the coal miners who reacted just exactly as you or I. They knew they had to work to provide food and clothing and begged for work at any price, although this was contrary to their union membership. Many of these families are living off of Federal food today.

"Progress continued in general throughout the industry but the growth of mechanical mining was slowed down in the Appalachian region between 1954 and 1959. Idled work-

ers became so desperate for work that men were willing to mine coal for meat and bread. Confronted with declining markets and tremendous increases in capital investment necessary to mechanize, small truck mines came into vogue throughout the Appalachian area from Pennsylvania to Alabama. My company elected to restrict this type of mining to isolated areas where coal acreage would not justify mechanization.

"The manufacturers of mine equipment build their prototype equipment adaptable to the thicker seams where it can be easily tested and proven. After the bugs are
2749 worked out of a particular machine design then smaller and more compact models are built to work in the thinner coal seams. We in southern Tennessee simply must wait until a machine small enough to fit in our coal seam is available.

"In 1957 TVA awarded us a long-term contract for coal at Widow's Creek, evaluated on the I.C. western Kentucky rail-barge rate of 207 cents. TVA insisted as a requirement of the contract that we achieve 17.5 tons per man-day. At the time we publicly bid for this business our productivity was between 10 and 12 tons per man day on the payroll. As stated, we bid this business in competition with West Kentucky Coal moving via Illinois Central to Grand Rivers, Kentucky, thence barge on the Tennessee River to Widow's Creek. This was the lowest cost transportation available to West Kentucky Coal operators.

"At the time we bid for this contract, TVA asked if we could verify our productivity of 12 tons per man day. We showed them actual production charts of our mechanized operations along with anticipated changes in the manning tables through automation. At this point our productivity was slightly ahead of the national average. I, personally, told Mr. R. A. Kampmeir, formerly assistant manager-power operations, Tennessee Valley Authority—that we would be glad to set 17.5 tons per man day as a goal to

shoot for, but that I felt further machinery would
2750 have to be developed before it would be possible to attain such a figure.

"From 1957 to 1959 the small truck mines, being manned with idles workers, flourished. Coal production in southern Tennessee increased tremendously and this coal was bought by TVA through 'spot coal' purchases. Under the TVA spot buying program, coal purchased is for less than $10,000 orders, which brings such a government purchase out from under the Walsh-Healy Minimum Wage Act. During the years spot coal purchasing procedures were revised to permit greater flexibility in quantities to be purchased from a single bid opening and closer timing of purchases in relation to the need by TVA.

"This action on the part of TVA created widespread violation of the minimum wage law, but succeeded in breaking down the coal prices. This resulted in labor unrests and hundreds more of 'dog hole mines' opened. Wages dropped from $3 per hour to $1 per hour. On December 31, 1959, TVA canceled our long-term contract for mechanized production of 6,000 tons a week because lower prices were available. We closed our mines in March of 1960. At that time our productivity was equal to the national average but not up to the thick-seam western Kentucky production. Our competitive situation had become demoralized to the point
where we were unable to pay the wage scale to the
2751 coal miners and compete with the prices being paid by TVA under their spot buying program. Organized labor for all wage and working purposes had become disorganized. Term coal mine prices of $4.95, paid in 1957 and 1958 in our field, had been cut through pressure negotiations down to as low as $4.07 on coal being mined out of dog holes and purchased by TVA under 'spot' bids and contracts."

Q. Mr. Callis, were those among the statements that you

made to the Interstate Commerce Commission in connection with those rates?

A. Yes, sir, but I would like to make this comment. That case was taken up in 1960, that statement was prepared in 1960, and the rate came into effect not until October 1, 1960, and we had already been shut down by the National Bituminous Wage Agreement and labor negotiations and strikes and work stoppages.

Q. Was not this statement signed and sworn to by you on January 26, 1962?

A. Yes, sir.

Q. Now, you did then criticize the TVA's purchasing program along the lines of statements made in your statement to the Interstate Commerce Commission?

A. Yes, sir.

Q. You not only criticized the TVA there but you criticized it in the press and in other places, did you not?

2752 A. No, sir.

Q. Did you ever have occasion to write to Senator Kefauver criticizing the Tennessee Valley Authority?

A. Yes, sir.

Q. Do you know whether or not the Tennessee Valley Authority ever stated its position with respect to the criticism contained in your letter to Senator Kefauver?

A. By reply through Mr. Vogel.

Q. I show you this letter and I will ask you if this was the TVA's stated position with respect to your criticism of it.

A. Yes, sir.

Mr. Rayson: Your Honor, we desire to introduce this as the next exhibit to Mr. Callis' testimony.

The Court: Exhibit No. 289.

(The letter referred to above was marked D289 and received in evidence.)

Mr. Rowntree: I think the letter of Mr. Callis ought to

go in to Senator Kefauver, if this letter is offered, otherwise we object for hearsay.

Mr. Rayson: Your Honor, we don't have the letter that Mr. Callis wrote to Senator Kefauver.

Mr. Rowntree: I have it here.

Mr. Rayson: Well, I think that Mr. Rowntree can offer that when he conducts his examination on redirect.

2753 Mr. Rowntree: I object to the letter being offered of Mr. Vogel on the grounds that it's hearsay and incompetent unless Mr. Callis' letter is read to Mr. Kefauver, to Senator Kefauver.

Mr. Combs: Will the Court indulge us one minute here? We haven't seen this.

I think, if your Honor please, that the witness has established the fact, and this is cross examination, I think we can ask questions without having us put in the letter that counsel wants to, and if counsel wants to put it in it's up to him to put it in. I think we have a right to cross examine on the Vogel letter because the witness has identified the Vogel letter as being the reply to the one he wrote.

Mr. Rowntree: This is the same type of objection we had on the letter of Mr. Ables to Mr. Turnblazer, and besides this is not a statement by the witness.

The Court: I am not aware of any exception to the hearsay rule that would make this admissible, gentlemen. Do you know of one?

Mr. Rowntree: We will waive our objection to this if they will read Mr. Callis' letter to Senator Kefauver.

Mr. Rayson: We do not offer this letter for the purposes of showing the truth of the thing of what Chairman

2754 Vogel of the TVA is saying, however, we do offer it for the purpose of showing the TVA's policy with respect to the repeated criticisms that have been made of the TVA and its coal purchasing policies by this witness and other spokesmen for the southern Tennessee coal operators, and we think to the extent that it states the policy

of TVA, the publicly stated policy of TVA as to these coal mine operators, that it would be competent.

The Court: Well, normally you would prove policy of an organization by some official who has some responsibility of that policy, wouldn't you, rather than by a person outside of the organization who is criticizing it?

Mr. Rayson: I believe the witness stated that he participated in certain proceedings and he has identified this letter as the stated policy of the TVA as taken in those proceedings.

Mr. Rowntree: If your Honor please, we will waive our objection to this letter if they will allow us to read Mr. Callis' letter later on. Is that agreeable?

Mr. Rayson: We are not going to agree to introducing Mr. Callis' letter to Senator Kefauver as a part of our proof, your Honor. Mr. Rowntree can undertake to offer that at the conclusion of our cross examination.

Mr. Rowntree: Well, we will waive our objection
2755 to this letter of General Vogel.

Mr. Rayson: Your Honor, I'd like to read Exhibit D289. It is addressed to the Honorable Estes Kefauver, United States Senator, Washington 25, D. C. It is a letter signed by Herbert D. Vogel, and I assume that we can stipulate that General Vogel was then the Chairman of the Tennessee Valley Authority, is that correct?

Mr. Rowntree: That is correct.

Mr. Rayson: The letter is dated February 24, 1961.

"Dear Senator Kefauver:

"This is in reply to your letter of January 31 which asked for TVA's comments on letters to you from Mr. Paul V. Callis, vice president of Tennessee Consolidated Coal Company, and from Mr. W. O. Hake.

"TVA is, of course, very interested in the situation affecting coal miners and operators in the southern Tennessee field. This matter has been of particular concern to us since we began our planning studies for the Widow's Creek Steam

Plant. Construction of this project was started with funds appropriated by the Congress in March 1950. I think you will find it helpful if I review briefly the history of TVA's experience with the southern Tennessee field as a source of coal supply at Widow's Creek.

"TVA's Widow's Creek Steam Plant is located on
2756 the Tennessee River in the northeast corner of Alabama approximately 25 to 75 miles by rail, truck, or truck-barge from the southern Tennessee coal field, which is located principally in Marion, Grundy and Sequatchie Counties in Tennessee. Obviously TVA's selection of the Widow's Creek site was influenced by its close proximity to the southern Tennessee coal field. However, in 1950, the total production of the southern Tennessee field was well under one million tons of coal annually; and TVA recognized that additional sources of coal would be needed, especially as the plant expanded.

"From the very outset, TVA found it necessary to supplement the coal supply available from the southern Tennessee field with western Kentucky coal. TVA recognized that an important part of the problem was the almost unprecedented speed with which the marked afforded by the Widow's Creek Plant developed. The coal requirements of the Widow's Creek Plant grew to an annual rate of nearly 2½ million tons by July of 1954—only two years after the first coal was received. But this was not the basic problem.

"The coal producers in southern Tennessee stepped up their production, but almost all of this expansion was accomplished by opening a great number of very small mines in which coal is loaded by hand in much the same manner as in the last century.

2757 "The costs of producing coal at these hand loading mines rose sharply as miners' wage rates increased, while other coal fields offset these increased costs through greater mechanization. The cost of coal for the

Widow's Creek Steam Plant became among the highest in the TVA power system. As a result, by 1957 TVA was using the Widow's Creek Plant primarily for peaking purposes; and the consumption of coal at that plant was sharply reduced.

"It was against this background that in the spring of 1957 TVA awarded the two long-term coal contracts which Mr. Callis mentions—one to his company and the other to the Tennessee Products and Chemical Corporation. It was the purpose of these contracts to encourage additional mechanization and improved mining methods aimed at increasing the per man-day productivity of the coal field. Both contracts contained commitments by the coal companies that specified improvements in productivity would be achieved within a stated period. Failure to achieve these improvements would automatically terminate the affected contract. At the time of its bid, Tennessee Consolidated stated its productivity was 12.5 tons per man day. Two years later, it reported its productivity was less than 10 tons per man day. Because of failure to meet the terms of its contract, Tennessee Consolidated's contract expired at the end of 1959. While the contract made with Tennessee Products has not been particularly successful, it
2758 has resulted in some increased mechanization and some improvement in productivity. This contract was for 4 thousand tons of coal per week for 10 years. It has now been amended to permit delivery of 6 thousand tons per week with the terms shortened to offset the increased rate of deliveries. The price per ton of the coal has been reduced.

"The basic problem of the southern Tennessee coal industry is its general failure to mechanize its operations. The coal industry in the rest of the United States has clearly demonstrated that through constantly improved mechanization the increased costs of labor can be offset and the price of coal can be kept from increasing. We might add

that a significant portion of the mechanization in other coal fields has been accomplished in seams which are no thicker and no less difficult to mine than those of southern Tennessee.

"The unsatisfactory history of the coal supplied from the southern Tennessee field has materially affected the usefulness of the Widow's Creek Plant as an economical source of fuel supply for the TVA system. Nonetheless, Widow's Creek's location near the large and rapidly growing power loads of the Chattanooga area establishes it as a plant which should be expanded, if possible. TVA has just completed one expansion — the 500 thousand
2759 K.W. Unit No. 7—and *how* now begun another—the 500 thousand K.W. Unit No. 8. The latter unit was placed at Widow's Creek only because the L & N Railroad agreed to issue a Section 22 rate from western Kentucky which would enable TVA to obtain coal from that field at delivered cost comparable with costs at most other TVA steam plants. Without this rate the unit would have been installed at a different location. The Section 22 rate from western Kentucky thus makes available to the southern Tennessee field a new market which it would otherwise have lost.

"The southern Tennessee field has many advantages in competing for this new contract. It has the advantage of the lowest rail freight rates available between any coal field and any TVA steam plant. These rates are 80 cents to a dollar lower than those available to western Kentucky mines. Southern Tennessee has a further advantage of approximately 50 cents per ton due to the fact that the southern Tennessee field generally produces a better quality of coal than does western Kentucky. The opportunity exists for this area to increase substantially the amount of coal supplied to the Widow's Creek Steam Plant if the producers will take the steps necessary to improve their mining methods so that they can take advantage of it.

"The coal producers in the southern Tennessee field undoubtedly have serious problems, but their real
2760 problems are unrelated to the freight rates from the western Kentucky field. The Section 22 rates from western Kentucky of which some southern Tennessee producers are complaining have been the direct cause of a major expansion to the coal requirements of the Widow's Creek Plant—their most important market.

"The suggestion that TVA evaluate coal bids by using the published tariff rates is wholly unrealistic. TVA coal traffic from southern Tennessee and western Kentucky has never removed on the published tariff rates. These rates are designed for the occasional movements of coal from markets which, for the most part, no longer exist and are much too high for the volume shipments required by modern steam plants. It is common practice for the railroads to publish lower than normal rates for mass movements of coal to privately and publicly owned electric power plants. The Section 22 rates available to the southern Tennessee field, for example, are less than 29 per cent of the regularly published rates—a much lower percentage than the rates from western Kentucky of which they complain. The L & N has always maintained that its Section 22 rates are no lower than the rates available to other shippers under the same conditions. Section 22 is merely the method of publication available for rates to government agencies.

"Adoption of the suggestion that bids of western
2761 Kentucky coal producers be evaluated on the basis of the published rates would not, as Mr. Callis suggests, assure that the government would obtain the benefit of the Section 22 quotation. It would simply price western Kentucky out of the market and leave TVA dependent solely on the southern Tennessee field for supply a unit which was put at Widow's Creek only because western Kentucky coal would be available as a source of supply.

"In evaluating coal bids, we must take into account all

the elements which make up the total cost to TVA. Bids for coal to be delivered to TVA by rail are made f.o.b. rail cars at the loading point. TVA must then pay the transportation cost and, of course, must consider the freight rates generally in effect in evaluating the bid. If the higher tariff rates, rather than the applicable Section 22 rates were used in evaluating bids, the low bidders on the basis of actual cost could be deprived of the contract. Obviously, such a result is unthinkable. As Mr. Callis recognized on page 3 of his letter, TVA is 'charged with the duty of obtaining goods and services at the lowest available cost', and will continue to do so.

"I appreciate the opportunity to review this situation with you."

Q. Mr. Callis, one of the points you were making before the Interstate Commerce Commission was that be-
2762 cause of this rate that you were no longer competitive at Widow's Creek, isn't that it?

A. I think the base point—that may be the resulting point—the base point made before the Commerce Commission that this rate was discriminatory, the results of which affected the economic position of southern Tennessee in the Widow's Creek market.

Q. Do you recall whether you also took the position that the truck mines in this area couldn't compete under that rate and pay the Walsh-Healy rate of wages?

A. I think my position was that it could not compete in this field, it could be that I said this, I am not saying I didn't, but I think that my concern was not so much the Walsh-Healy as it was competing in the Widow's Creek market and pay the United Mine Workers National Bituminous Wage Agreement scale. I don't think that could be done.

Q. Did you assist your counsel in preparing this case before the Interstate Commerce Commission?

A. Did I assist him?

Q. Yes.

A. Yes, sir.

Q. I will ask you if you were familiar with the complaint which was filed by your company in that case.

A. Yes, sir.

2763 Q. Is that the complaint which was filed with the Interstate Commerce Commission?

A. As far as I can see it is.

Mr. Rayson: Your Honor, we desire to introduce that as an exhibit in this case.

The Court: Exhibit No. 290.

(The complaint referred to above was marked D290 and received in evidence.)

Mr. Rayson: Page 7 of this complaint, the complainant says:

"The Tennessee Valley Authority operates other steam plants for production of electric energy, including Johnsonville, Tennessee, and Shawnee Plant at Chiles, Kentucky, in the Tennessee river basin adjacent to the low cost western Kentucky and southern Illinois coal fields; and that low cost coal on the Shawnee and Johnsonville bids is diverted to the Widow's Creek Steam Plant on the above-named low rates designed to fix prices at Widow's Creek which complainants and other operators in the southeastern Tennessee coal field are unable to meet and at the same time comply with the Federal Walsh-Healy Act."

Q. Now, Mr. Callis, you mentioned that when you started working for Tennessee Consolidated Coal Company that there was an arrangement known as the A. L. Henderson lease. Was this in effect at the time you started with

2764 the company?

A. Yes, sir.

Q. And it remained in effect, I take it, until 1960, is that correct?

A. That is correct.

* * * * * * * * * *

2769 Q. You learned since you have been the president of your company that certain officers of Tennessee
2770 Consolidated Coal Company had become investors or somehow or other involved in these small mines on your property?

A. Yes, sir.

Q. Was this known to the other officials of the company prior to your disclosure of it?

A. The investment by officers in small mines?

Q. Yes.

A. Yes, sir.

Q. Was it known to others?

A. I assume it was known, the Board approved the action.

Q. The Board approved what action?

A. The action of Mr. Roberts to have an investment in a test mine.

Q. What mine was that?

A. Originally the Earl Patten Mine.

Q. Well, did the Board know that Mr. Roberts was an investor in several other of these small mines?

A. No, sir.

Q. You didn't know?

A. No, sir.

Q. You discovered it quite by accident in 1961, didn't you?

A. Yes, sir.

Q. I believe you reported—

2771 A. (Interposing) Excuse me, I believe that discovery was made in '63 at the time the Palmer office—we had to evacuate the records of the Palmer office, is when it came into being and I could be wrong, but that's what I remember.

Q. I refer you to your letter of November 17, 1961, which has been introduced as an exhibit in this case. I

show you this copy. We will find the number of it here presently.

A. Yes, sir, I am familiar with that.

Q. I will ask you if that letter wasn't the result of your finding that certain officers of the company, supervisors, were involved in these small mines.

A. This particular letter at the time it was written by me, I think, was more what caused me to write this letter, I was prompted more by conflicts of interest in management.

Now, it is true Mr. Roberts had interests that was known to the Board at this time, but when I referred to certain information that came into my possession in '63 I am referring to these other mines that you referred to, such as the Charlie Martin Mine and the North End Coal Company and different ones like that that I did not have knowledge of at the time this occurred.

The Court: Is that Exhibit 283?

2772 Mr. Rayson: It is an exhibit which was introduced during the course of Mr. Callis' testimony, your Honor.

The Court: Exhibit 283.

Clerk Robert Dale: 283 is a cancellation of the Henderson lease.

Mr. Rayson: That's correct. It was one of two documents.

Q. Well, did you know that several of the truck mine operators were paying a part of their profits to certain officers of the company at the time you wrote this letter of November 17th?

A. Mr. Rayson, it merely resolves itself down to whether they were paying Mr. Roberts a service or whether they were participating in profits. I am not trying to avoid your question, it's a known fact. I want to answer your question but at the same time I don't—

Q. (Interposing) My question is this: Did you know that they were doing it at this time?

Testimony of Paul V. Callis—Cross

A. I knew that they were doing this type of thing but there were categories of whether some of it was authorized and some wasn't, I am trying to find out which you are talking about.

Q. How many of these truck operators on your property were paying this amount to Mr. Roberts or any of
2773 your other officers at that time? I believe you had nine mines on the property then, did you not?

A. Three to four that I know of or knew of.

Q. Did you not report to your Board that seven out of nine were doing that?

A. You said paying Mr. Roberts?

Q. Or some other official or supervisor of the company?

A. Could have been as many as seven but you said Mr. Roberts.

Q. All right, sir. And you did advise these men that they had no obligation whatsoever to make payment of any tribute or any amount to any official of the company?

A. Correct.

Q. How long did you learn that that had been going on?

Mr. Rowntree: Object to hearsay, your Honor. We have got records in the case in respect to the period of time it went on with respect to the only plaintiff that was involved. His records on that question are already in the record and Mr. Rayson was engaging in hearsay at this point and we object on the ground of hearsay.

Mr. Rayson: I don't think that an investigation made by the chief executive officer of the Tennessee Consolidated Coal Company of the activities of other officers and
2774 supervisors of that company would constitute hearsay, your Honor.

The Court: Overrule the objection.

Q. How long had this been going on, Mr. Callis?

A. To my knowledge from 1953.

Q. And as to what extent had it been going on without the approval of the company?

A. I really don't know. When you say "as to what extent", are you referring to dollars or number of people or?

Q. Well, at what mines had it been going on without the knowledge or approval of the company, at what truck mine?

A. I think that the Higgins Mine it was not known, it was known as the Martin Mine and that's—

Mr. Rowntree: (Interposing) May I ask the answer to that last question be read?

(Thereupon, the record was read by the court reporter.)

Q. You have spoken of this matter in terms of a conflict in interest, Mr. Callis?

A. Yes, sir.

Q. Did you conclude that the officers of the company who were indulging in these practices had decided against mechanization of your major mine in order to engage in

2775 truck mining operations?

A. That was certainly one of the considerations that I gave.

Q. Did that develop in connection with some events that occurred in the late 1950's?

A. What event do you refer to?

Q. Was not the Coal Valley Mine, did not Mr. Roberts recommend against certain mechanization steps in the Coal Valley Mine in the 1950's in order that land would be available on which these truck mines could operate?

A. Could possibly well be. I was not in the production department to the extent of making that decision. It is true that Mr. Roberts was in charge of the Coal Valley operations, superintendent, vice president in charge of operations and responsible for the purchase of the loading machines, the CLR loading machines, the mechanization to gear up for the T4 contract, and Mr. Roberts met with a double-cataract operation, I think in 1957, which shocked his nervous system and I was assisting him in any way I could. I think this had a profound effect on his ability to

make a decision concerning the recommendation of such high priced equipment.

Q. But you had previously stated that when you investigated this matter it was your conclusion that he had decided against mechanization in order to further his
2776 truck mine interest in the same area?

A. I say I think that was one thing that crossed my mind but I don't think Mr. Roberts was opposed to mechanization as such for the purpose you mentioned.

Q. Mr. Callis, you have referred to several contracts in the course of your testimony here, including your 1952 contract at which you bid a $4 mine price for 20 thousand tons of coal to the Widow's Creek Plant and 80 thousand tons at a $4.35 price.

Now was that $4 and $4.35 a delivered price?

A. F.O.B. Palmer, Tennessee, the weighted average, as I recall the weighted average was $4.09, I think the freight rate at that time, as I recall, was a dollar, the delivered price at the steam plant would be $5.09, that's the weighted average.

Q. Did the TVA award a contract to you on the basis of that bid?

A. Yes, sir.

Q. Did you have any competition in getting that bid?

A. Yes, sir.

Q. How did the TVA decide to give you that bid rather than your competition?

A. Through their evaluation formula for converting the mine price and the transportation cost in through the quality offered and guaranteed analysis into a cost
2777 per million BTU delivered price.

Q. Well, does this formula take into account the quality of your coal?

A. Yes, sir.

Q. Does it take into account the transportation charges?

A. Yes, sir.

Q. Are those the two factors that make up this evalnation with the TVA?

A. The mine price, the quality, the transportation cost.

Q. Did you have West Kentucky competition in that bid?

A. Yes, sir.

Q. Do you recall whether the West Kentucky Coal Company bid at that time?

A. I can't recall on that specific bid but I would think that they did.

Q. Were there few or many coal companies in West Kentucky at that time?

A. Many.

Q. That's what we refer to as the western Kentucky field?

A. Yes, sir.

Q. Now, you have referred to a bid submitted by
2778 the West Kentucky Coal Company on March 3rd, 1953, I believe?

A. Yes, sir.

Q. Of $4.85 delivered to Widow's Creek?

A. Yes, sir.

Q. And you have referred also to a bid which you submitted, apparently at the same time at $5.44 and $5.09, do you recall that?

A. That is it.

Q. That's the previous bid, the 1952?

A. The bid we are talking about, it sounds like it is.

Q. All right. Do you recall at what price your bid was evaluated by TVA?

A. I am not sure, Mr. Rayson. It would be a pure guess on my part. I do recall the West Kentucky evaluation, 2234.

Q. That's 22 cents and 34 mills per thousand BTU?

A. 2234, that's 22 and 34-hundredth cents per million BTU.

Q. Per million?

A. That's West Kentucky, that's what I think it is.

Q. Was your bid, you believe, more or less than 20 cents per million BTU?

A. As I recall, it seems to me it was around 2116, 2779 was it?

Q. We can refer here. All right, sir.

A. These don't go back that far. 52FY, I don't know what the exhibit is.

Q. I show you this exhibit and I will ask you if the evaluation on that bid was 19 cents and 93 mills per million BTU's?

A. Bid 8259, which is the bid we are discussing, delivered price of $5.09, evaluation per million is 19.93.

Q. This is so—

A. (Interposing) Just a minute, just a minute. 19.93 is the evaluation cost on the carbon. Now, the evaluated cost on the $4.35 screenings, which is 80 thousand tons, is 20.64.

Q. Twenty cents and 6 mills?

A. That's right. Now, let me see here. There is a scratched off figure on this sheet but it shows 20.30 cents per million BTU weighted average.

Q. Can you tell us then how much in cents per ton approximately your bid was below the bid of West Kentucky Coal Company at that time?

A. Yes, sir, 25 cents per million BTU, if it was 22.34, and you are at 20.09, you are 2.43, which would be approximately 50, 62 cents a ton.

Q. Sixty-two cents a ton on your higher evaluated 2780 coal?

A. That's average.

Q. A little over 75 cents on the other, is that right?

A. That was the average of the two that I used.

Q. Sixty-two cents. Now, is this because of some difference in the quality of your coal and in the West Kentucky coal?

A. Yes, sir.

Q. Is this a typical difference in southern Tennessee coal

on your property and coal in the western Kentucky field?

A. No, sir. There is a difference between the coals mined in the Pocket area and the coals mined in the mechanized mine. This is brought about by mechanization which introduced bottom shale, rash and so on. The quality of the mechanized coal in southern Tennessee is not nearly as high a quality as the Pocket. I would evaluate the difference in many cases to run 15, 20 cents a ton difference.

Q. Twenty, 15 to 20 cents a ton difference in what?

A. Per ton difference in quality evaluated by TVA on the delivered basis.

Q. Well, nevertheless, though, what we are talking about is a comparison between your coal and that in the western Kentucky field.

A. I would say the range of the quality differen-
2781 tial that's what you are asking, of the two fields?

Q. That's right.

A. Would range from 35 cents up to 62 cents, 50 cents is a pretty good rule of thumb.

Q. What was your transportation rate to Widow's Creek in 1953?

A. In 1953?

Q. Yes, sir.

A. I believe it was a dollar. Now, at that time there was a reduction down to 80 cents.

Q. Did you take any steps to secure a reduction in that rail rate or transportation rate?

A. No, sir. That was a Section 22 quotation. It was brought about by truck competition. The railroad was interested in getting more business, of getting more coal haul on the Tracy City branch and trucks were competing at that time.

Now, the reason I say "no, sir," because the private shipper is not permitted by law to enter into the making of a Section 22 rate and we never did participate in the making of any Section 22 rate.

Q. Well, in any event, was a lower Section 22 rate brought about to the advantage of the southern Tennessee producers at some time after 1953?

A. Yes, sir.

2782 Q. And at what level did that rate go?

A. Sixty five cents on the Tracy City branch, 60 cents on the Sequatchie branch.

Q. That was?

A. Whitwell.

Q. This was your field to the Widow's Creek Plant?

A. Our field to Widow's Creek, 65 cents.

Q. At that time what was the all rail rate from the western Kentucky field to the Widow's Creek Plant?

A. I think, I think the lowest all rail rate from Madisonville to the Widow's Creek Plant, I could be wrong about this, but I think it was $2.07. Now, I may be confused with the I. C. barge load rate which was $2.07, I know.

Mr. Rowntree: What period of time are you talking about?

Mr. Rayson: I am talking about from the time the Tennessee Consolidated Coal Company and Tennessee Products enjoyed the 60-65 Section 22 rate in 1953 up to August of 1960.

A. If my memory serves me, I know that the rail rate was $2.45 or $2.40, and it could have been reduced to $2.07 to meet the I.C. Grand Rivers barge.

Q. This was a barge-rail combination rate of $2.07 from that field to Widow's Creek?

2783 A. Yes, sir.

Q. Now, that was at the time that you had a 60 to 65 cent rate?

A. Yes, sir.

Q. And at the same time, of course, you had your traditional quality advantage of, as you say, 50 to 62 cents?

A. Yes, sir.

Q. Are these the reasons, Mr. Callis, that the western

Kentucky coal fields were not competitive in the Widow's Creek area during the 1950's?

A. No, sir, back to the old Guffey Act and the Solid Fuels Administration and the establishment of Coal Producing District No. 13, all of the districts producing coal in the entire Appalachian area, in fact, the whole United States, were set up and prices were frozen and these prices were frozen based on the published tariff rates in the production of these fields.

But now, I am not going off on a big long conversation on this, I just want to make it clear to you that these freight rates in these various producing fields were correlated by the United States Government under the Guffey Act and under the Coal Producing District 13 which we were related to Alabama.

Q. Let me ask you the question this way: Was this substantial difference in the freight rates and in
2784 the quality rates among the reasons why the western Kentucky field was not competitive?

A. No, sir.

Q. In Widow's Creek with you?

A. No, sir. They simply reached in the outer perimeter of their marketing area, just the same as when we ship north we reach the limit of our area of where we can ship going north into West Kentucky at Murfreesboro.

Q. Because of freight rates?

A. Because of controlling transportation costs.

Q. All right. Do you recall the companies with whom you competed for the business at the Widow's Creek Plant in 1957?

A. Yes, sir. I'd like to refresh my memory.

Q. I refer you to Exhibit 175, which I placed by your chair. Let me ask you this question, Mr. Callis: This is the bid at Widow's Creek in February of 1957.

A. You said February, didn't you?

Q. Yes, sir.

A. Was that February 26th?

Q. Page 7 of the February bid.

A. I am having trouble finding it. Do you have a copy of it in front of you?

Q. Yes, sir, I do.

A. What is it?

2785 Mr. Rayson: May I approach the witness, your Honor?

The Court: Yes.

A. What is the first bid, River Valley Coal Sales?

Q. Yes.

A. Okay. I see. There's no number on this, that's what my trouble is.

Q. Do you recall whether any of the western Kentucky companies received an award at the time of the 1957 bid?

A. Yes, sir.

Q. At Widow's Creek?

A. Now, I don't know about the award sheet at Widow's Creek, I don't think so.

Q. What about West Kentucky Coal Company, did it receive an award then?

A. No, sir, not for delivery to Widow's Creek.

Q. Peabody Coal Company, did it receive one?

A. Not that I know of. They bought for other delivery points, this was a system-wide bid.

Q. Well, they evaluated at Widow's Creek?

A. Yes, sir. Let me just see here. I say yes, I assume they evaluated all of them at all of the plants, but let me take a look. Here is United Electric, Walter Bledsoe, Bell and Zoller, Dawson Coal Company, Kilpatrick Coal Company.

2786 Q. Do you know whether any of those companies received awards at Widow's Creek?

A. Peabody Coal Company, Peabody-Southern and West Kentucky Coal Company all were evaluated at Widow's Creek.

Q. Was West Kentucky Coal Company evaluated at a higher or lower price than your firm?

A. I am reading Tennessee Consolidated's evaluation at 22.40. Is that what you have there?

Q. Yes.

A. And West Kentucky Coal Company at the Kinsington Mine bid at 22.48.

Q. All right, sir. What about the next bidding at Widow's Creek that you referred to? At that time I believe Tennessee Consolidated obtained an award at *it's* Palmer No. 1 mine at 21.83?

Mr. Rowntree: What date?

Mr. Rayson: May of 1957.

A. All right. I am with you.

Q. Is that correct?

A. Tennessee Consolidated Coal Company's evaluation, you said on the bid of May 9th?

Q. Yes.

A. Bid No. 21, 21.83.

Q. Who was your competition at that letting, Mr.
2787 Callis?

A. West Kentucky Coal Company.

Q. Did West Kentucky obtain a bid or obtain an award, that is?

A. No, sir, but they bid 23.41.

Q. How much more per ton would that be than yours as it was evaluated at Widow's Creek?

A. Be about a cent and a half, 37 cents, 35 cents a ton.

Q. Thirty-five cents a ton?

A. (Witness moves head up and down.)

Q. Actually you were the low bidder at that time or was Tennessee Products the low bidder?

A. Tennessee Products.

Q. Tennessee Products was your chief competition?

A. Excuse me. The Green Coal Company of Ohio River —West Kentucky was the lowest.

Q. Green Coal Company?

A. The first bid, Bid No. 3-1, Green Coal Company out of Davis County, No. 9 vein, 20.99.

Q. Are you familiar with that company?

A. I know of it from competition.

Q. Was this the T4 contract that you spoke about, Mr. Callis?

A. Yes, sir.

2788 Q. You say at that time that Mr. Kampmeier or somebody in the TVA suggested to you that you should strive for an increase in productivity?

A. Yes, sir.

Q. Did you tell him that you would try to do that?

A. I sure did.

Q. How much productivity did he want?

A. He asked for 17½ tons per man, as you read in the Section 22 dissertation of mine, which we were able to achieve 12 and a half, finally got him to agree that we might be able to make 14.

Q. Why did Mr. Kampmeier want you to increase your productivity?

A. I would say as best expressed by Mr. Vogel.

Q. Was Mr. Kampmeier speaking for the TVA interested in obtaining coal at a lower price?

A. Yes, sir.

Q. Did he advance to you the idea that if you produced more coal per man then the price to him would be lower?

A. Yes, sir.

Q. And was that why he was interested in increasing your productivity?

A. Not a hundred per cent. He was concerned, he wanted to increase the productivity all right but he was con-

2789 cerned with the increased power market in the Chattanooga area and he wanted to bring the Widow's Creek fuel costs more in line with those of the western Ken-

tucky or Johnsonville-Shawnee Steam Plants in the western division.

Q. All right, sir. Now, did Mr. Kampmeier, or did the TVA ask you to do this or did they demand that you do this contractually?

A. It was part of the contract that we would attempt to achieve 17 with a minimum of 14, and we qualified with productivity of 12½.

Q. In other words, this wasn't some effort that you undertook to do as a matter of promise but this was a contractual undertaking?

A. Yes, sir.

Q. It was by reason of your failure of having achieved that measure of productivity that that contract expired at the end of 1959?

A. Yes, sir.

Q. And not simply because the TVA could obtain coal lower, as you stated in your statement in the ICC?

A. This type contract, so that we get the record clear on it, it was a productivity, it was a price reduction type of contract by way of increasing productivity through mechanization, now, that's exactly what it was.

Q. In any event, the contract expired because of
2790 the failure of the company to achieve that productivity?

A. It expired because the company failed to achieve the productivity during the qualifying period set up in the contract. After that period had run by it was proven that the strip and auger production from the contiguous properties meshed with the T4 productivity that we had did meet the minimum requirements of the contract but it was too late.

Q. Did your agreement with the TVA require you to make certain progress reports?

A. Yes, sir.

Q. Did you make those reports?

A. Yes, sir.

Q. In these progress reports did you outline to TVA how you expected to achieve this productivity?

A. Yes, sir, as I recall.

Q. Do you know whether TVA agreed with you that your plans were sound?

A. In some cases I think they agreed and in some cases they disagreed.

Q. Did not TVA take the position that not only your plans were not adequate but that your timing in preparing these plans until this contract, under this contract was delinquent?

A. This timing that you mentioned was caused, so far as I am concerned and recall, it was caused by the
2791 many work stoppages and delays of getting the equipment installed, and getting the thing on the road.

Q. I hand you a paper dated November 29, 1957, and I will ask you if this isn't one of your company's progress reports under the contract T4 to the TVA?

A. Yes, sir, this is a copy.

Mr. Rayson: We desire to introduce that as an exhibit, your Honor.

The Court: Exhibit 291.

(The report referred to above was marked D291 and received in evidence.)

Q. I hand you another document, dated July 31, 1958, and ask you if this isn't a subsequent or second progress report to the TVA under that same contract.

A. Yes, sir.

Mr. Rayson: We desire to introduce that as an exhibit, your Honor.

The Court: Exhibit No. 292.

(The report referred to above was marked D292 and received in evidence.)

Q. It was in this second report, Mr. Callis, that you are

proposing this method of strip mining, auger mining, and then some other kind of—

A. (Interposing) Deep mining.

Q. Deep mining, is that correct?

2792 A. Yes, sir.

Q. Are you saying that your company waited a whole year to decide upon this plan because you had strikes?

A. No, no. You are confused.

Q. I misunderstood your testimony.

A. The initial progress report that you submitted to me was dated November the 17th, 1957, is that correct?

Q. Yes, I believe so.

A. I don't want to be positive about dates because I have had so many dates today to think about.

The Court: Exhibit 291 was November 29th.

A. The first was November 29th, that report was purely a progress report to the extent of expressing what had been done in the way of purchasing equipment and what had actually been bought. Now, in July, what was the next date of it?

Q. July of 1958.

A. In July of 1958 was the end of the first test period, six months, July of '58, the first one, there was still another period from July 1 through the end of the year.

Now, the second report that was submitted was submitted simply because we introduced auger and deep mining, that is the Wilcox Miner underground on the deep mining, which was new to the idea of deep mining increase in pro-

2793 ductivity.

We then put in the strip and auger operation because we had failed to make enough progress in the first six months with the underground mining at the Coal Valley C Mine under the T4 contract, we were proposing to introduce strip and auger mining at that time.

Q. Did the TVA take exception to that report of 1958?

A. Yes, sir, I think there was an exception made to the

report questioning the amount of mileage or miles of contour that we had to justify the tonnage for the full 10-year period in the strip and auger.

Q. Did not they except to the entire plan and point out that they felt that it was inadequate as a basis for proceeding on any permanent increase of productivity?

A. Yes, I think you are correct, that they felt that the alternate plan of auger mining would not develop productivity that could be depended upon for the future years to come.

Q. I hand you a letter dated August 25th from the Tennessee Valley Authority, D. C. Hill, Chief, Coal Procurement Branch, to your company.

I will ask you if that is the response of the Tennessee Valley Authority to the plan for increased productivity you had under your plan for T4.

2794 A. It states as I have said, yes, this is an authentic letter, it states as I said.

Mr. Rayson: Your Honor, we desire to introduce this as the next exhibit.

The Court: Exhibit 293.

(The letter referred to above was marked D293 and received in evidence.)

Mr. Rayson: I'd like to read that letter, if I may. It is addressed to the attention of Mr. Stanlee Hampton.

"Subject: Contract 57P-20974-T4—Coal for TVA Steam Plants.

"We have completed our review of the data furnished by your lawyer of July 31 relating to your proposed plans to achieve increased productivity for the coal furnished under this contract.

"We have given much thought and study to the proposed mining program you outlined. In our opinion, it is inadequate to provide us reasonable assurance that you can obtain the expected productivity of 17½ or more tons per

man day by July 1, 1959, as called for in the contract, and, for that reason, we do not approve the plan.

"We feel that the plan you propose is inadequate for several reasons. The available reserves for high-productivity strip and auger mining are limited. In the
2795 10 miles of contour you discussed, we estimate that there is not sufficient strip and auger tonnage to justify two years' deliveries under this contract and, of course, you plan to make some of that production available to your affiliate, Whitwell Coal Corporation, to satisfy the requirements of Contract 58P-99095-T12. Consequently prompt commencement of new high-productivity deep mining is essential. Your report is quite indefinite as to whether a new high-productivity deep-mining operation will be installed. You state, 'We are going to open this 3-entry mine and project it 3,000 feet into the seam with our conventional equipment as soon as power is available. If the mining conditions encountered while driving these entries prove suitable for the installation and use of the Long equipment we will install the "full dimension" mining plan.' You have offered no alternative for achieving increased deep-mine productivity if you then decide that Long 'full dimension' mining is not feasible. More than a year has elapsed since deliveries began on the contract. We feel that the type of investigation which you are proposing for the months ahead should have already been made.

"The report fails to outline the extent to which you plan for the Palmer No. 1 Mine to continue to furnish coal under this contract. It gives no information as to the expected productivity from this mine for the remainder of
2796 its life. We feel that you should have furnished us a schedule which looked ahead for the remaining possible maximum term of Contract No. 57P-20979-T4. The schedule should have covered the output and productivity you expected to achieve year by year at the Palmer No. 1 Mine, and stripping operations and augering operations and

at new deep-mining operations. Only with such information could we determine that a satisfactory average productivity rate could be acheived, and once achieved could be sustained. We thought that you fully understood the need for furnishing this type information from the conversation which we had preceding your July 31 proposal."

I don't care to read any more of this letter.

Q. And you never did satisfy the TVA that you were taking adequate steps under that T4 contract, did you?

A. The second test period was granted.

Q. They extended your contract?

A. They extended the test period. You see this, just what you just read said that the test period ended July 31st, the test period was extended until the end of 1958.

Q. They extended your test period and they also extended your contract by six months?

A. The only reason for the six months extension of the contract was the agreement by Mr. Hampton and Mr.
2797 Roberts to reduce the price 20 cents a ton to keep the mines running.

Q. Were you—

A. (Interposing) It had nothing to do with being able to continue on after that, so the last six months had nothing to do with that. The point I am making, connected with what you are talking about, TVA in that letter pointed out that July 31st that we hadn't submitted a satisfactory proposal and that we had had a year since the beginning of the contract and we had this and that, but even in the face of that they agreed to take a six months further test period because we had been denied the full running time of that coal mine because of work stoppages.

Q. And absenteeism?

A. And absenteeism.

Q. And that's the reason you brought in this absenteeism argument to the TVA?

A. No, it's a fact.

Q. Well, I say, that's why you were advancing the absenteeism argument to the TVA?

A. Naturally, you bought machinery and can't use it and you can't fulfill your contract commitment, what do you expect me to do?

Q. Mr. Callis, you said, I believe on your direct testimony, that the union gave you some help but belat-
2798 edly, is that right?

A. By the way, I would like to correct a date that I made a mistake on, I think. I remarked, or I testified that Mr. Pass met in the bath house on October 14th, I'd like to correct that to August the 11th.

Q. What year, sir?

A. Nineteen fifty-eight.

Q. So it was—

A. (Interposing) No, excuse me.

Q. You are saying this morning—

A. (Interposing) Excuse me.

Mr. Rowntree: Let him answer.

A. Excuse me, 1959.

Q. Nineteen fifty-nine?

A. Yes, sir. Now, Mr. Pass did a good job, I don't want to make any inference that he didn't, because the productivity shot up right quick because those men went to work when he got on them, but it was too late.

Q. Didn't you tell the TVA that the union was giving you help long before that on that matter, Mr. Callis?

A. Whatever the facts were were what we laid down.

Q. You don't want to leave the impression in your testimony that the union wasn't cooperating with you and helping you on those problems?

A. I am laying down the facts, Mr. Rayson, just
2799 the way it was.

Q. I show you a letter dated August 8th, which you wrote to Mr. Hill of the TVA, August 8th, 1958.

A. Yes, sir.

Q. Do you recall that letter?

A. Yes, sir.

Mr. Rayson: We desire to introduce that as an exhibit, your Honor.

The Court: Exhibit No. 294.

(The letter referred to above was marked D294 and received in evidence.)

Q. Mr. Callis, I believe this is one of the letters in which you wrote to TVA about this absenteeism problem, isn't it?

A. If the letter so states.

Q. I'd like to read this language from the letter on page 2.

"The news of being awarded a contract to this mine was received by our men and their families with great enthusiasm but after a few months absenteeism and irregular work began to climb upward until it reached an alarming stage, some days as much as 20 per cent, this includes the period of this report.

"The local officials at Palmer of the United Mine Workers were told many times of this situation by the
2800 company as well as the Middlesboro district officials of United Mine Workers of America from which sources and from the company's effort we have noticed an improvement in attendance."

So this wasn't too late, this was in August of 1958, wasn't it, Mr. Callis, that you were getting that help from the union upon your request?

A. That's right, that was the middle of the last test period, and, if you will recall the beginning of the *strang* because of the bulldozer and the strip and auger operation—

Q. (Interposing) I have understood you to say 1959.

A. Oh, excuse me. You are speaking about Pass, Albert Pass coming to the bath house and talking to the men about absenteeism?

Q. I am speaking of the assistance that you received from the United Mine Workers with respect to the claimed absenteeism problem.

A. I could be wrong on this day but I know it, I think it was August of 1959. Now, if it was August of 1958 I stand corrected. I am not going to argue with the facts but I still say if it was August of '58 it was too late, it was the middle of the last test period.

Q. The contract expired then in December of 1959,
2801 is that right?

A. December 31st.

Q. And it was following that that you had these meetings with the district officials in Knoxville and in Chattanooga and in Palmer?

A. Yes, sir.

Q. I believe you have introduced as an exhibit to your testimony your personal notes of the meeting of February 22nd, 1960?

A. Yes, sir.

Q. Did you at that meeting tell those men that you weren't interested in producing coal at less than the United Mine Workers scale?

A. I sure did, Mr. Rayson, because I wasn't interested in breaking a contract.

Q. Hadn't you already given them the notice of termination?

A. Mr. Rayson, if you will read this in the light of a salesman's selling coal, I am talking about scale, I am not talking about contract. The intent there is that I did not want to sell coal at a loss.

Q. You mean you didn't tell the men that you wanted to operate*d* under the United Mine Workers contract? Haven't you told them that repeatedly, Mr. Callis?

A. Restate your question.

2802 Q. Haven't you told these men over there that you wanted to operate under the United Mine Workers contract?

A. I do, in as far as I am concerned I still would to this day if you people would negotiate.

Q. But that's what you were telling them then, weren't you, that you didn't want to work at less than the United Mine Workers scale?

A. That's not what I said. I said I wouldn't sell coal. I am not talking about working.

Q. Were the men contending at this meeting that the management of the company hadn't given local management the chance to properly operate the mine?

A. Mr. Marvin Brown, while under the influence of alcohol, made that statement.

Q. Was he the only one that made that contention?

A. As an official report to the meeting, yes, he stood up and made the statement.

Q. You heard that report, though, before, haven't you heard that contention before, haven't you?

A. Yes, sir.

Q. It's a rather widespread belief among the men there?

A. I have heard the report before.

Q. Mr. Roberts represents one part of the company from the ownership standpoint, doesn't he?

2803 A. He is a stockholder.

Q. Mr. Roberts and his family own around a fourth of the company, something to that effect?

A. Well, I don't think it is that much.

Q. Well, they are one of the families that own this company, that are active in the management?

A. They are.

Q. Or were at that time?

A. Mr. Roberts and his father are the founders along with Mr. Hampton, those people have run that property for 60 years.

Q. And Mr. Hampton has family representatives that are part of the management of the company?

A. Yes, sir.

Q. And over the years Mr. Hampton and his family have been located in Nashville, as far as management is con-

cerned, and Mr. Roberts and his family have been down here at the mine?

A. That is correct.

* * * * * * * * * *

2804 Q. I want to show you a memorandum dated March 7th, 1960, which purports to be a memorandum of the meeting at Palmer.

A. Yes, sir.

* * * * * * * * * *

CROSS EXAMINATION (continued)

2813 By Mr. Rayson:

Q. Mr. Callis, during your testimony yesterday, it was mentioned that some of the truck mines on your property were involved in a Department of Labor matter in 1954 and 1955. Do you recall that?

A. Yes, sir.

Q. Were these mines then selling their coal through Whitwell Coal Corporation?

A. I couldn't be sure about that, it is possible that they were at that time.

Q. Whitwell is an affiliate of Tennessee Consolidated Coal Company, is it not?

2814 A. Yes, sir.

Q. It is not owned by exactly the same stockholder interests, is it?

A. No, sir.

Q. Are the stockholder interests quite similar, however?

A. The individuals are pretty much the same, but the ownership I think is not the same.

Q. Is not Tennessee Consolidated Coal Company the largest stockholder in Whitwell Coal Corporation?

A. Yes, sir.

Q. Now, getting back to this Department of Labor matter, do you recall what the truck mine operators were accused of in that proceeding?

A. Violations of the Federal Safety Code, the Code being

—let me say it this way, Mr. Rayson: I think at the time of this charge the Walsh-Healey Act did not have the Federal Safety Code as the safety code of the Act, however, out of that case, which was, I think, the first case involving violations of safety under the act, it was made very clear that the Federal Coal Mine Safety Code, the Federal Mining Code, was the yardstick of safety under the Walsh-Healey Act. I don't believe it was at the time of the violation, but that's what it was all about, unsafe conditions under the Federal Mining Code.

2815 Q. The Department of Labor was taking the position that these truck mines were bound by the Federal Safety Code by reason of the fact that they were selling their coal to the TVA, is that correct?

A. Correct.

Q. Now, what specific violations, if you recall, were these truck mines charged with?

A. Many and various. For instance, if a Federal inspector made his routine inspection of the mine and wrote up violations involving the mine not being rock dusted as close to the face as required under the mining code, I think one of the items that they claimed about was not using permissible powder, not using permissible shooting batteries, and various items that are normal routine in inspection items that show up on Federal Mine Safety Code inspections.

Q. Now, did this matter come to a hearing before an examiner of the Department of Labor?

A. Yes, sir.

Q. Do you recall that man's name?

A. Mr. Parkinson, as I recall, I think that is correct.

Q. Did he find that the truck mines had, in fact, been guilty of the violations with which they were charged?

A. Whatever his decision was, I know that he found some of those mines guilty of violations, but the

2816 decision made there was not final.

Testimony of Paul V. Callis—Cross

Q. Did you employ counsel to represent those people?

A. Yes, sir.

* * * * * * * * * * *

Q. Mr. Callis, did not the trial examiner at that hearing, because of these violations, recommend as a part of his decision that these mines be blacklisted under the provisions of the Walsh Healey Act?

A. I know that blacklisting was discussed, but, now, just whether he recommended it or not, I can't recall. He may have, I am not saying he did or he didn't.

Q. Did not your counsel thereafter undertake to work out a settlement of this matter with the Department of Labor?

A. Not just a matter of counsel, Mr. Rayson, there was a meeting in the Secretary of Labor's office of the United States, Secretary of Labor of the United States, when he found that these small truck mines were independent contractors and hiring people directly and providing employment, then he went into the discussion of the correction of these violations and it was on a Washington level with the Secretary of Labor Mitchell himself, and he was very much in favor of this small business enterprise going forward.

2817 Q. And assurances were given that these safety violations would be corrected?

A. Correct, yes, sir, that is right.

Q. And it was on that basis that the blacklisting penalty was removed?

A. Yes, sir.

Q. Did your truck mines at that time operate under written leases?

A. They were operating at that time under A. L. Henderson lease, and I do believe there was a written lease, I am not positive about that, I am not sure.

Q. Do you recall whether or not these leases were terminable on a 30 day notice?

A. I am not sure.

Q. Have these truck mines operated under written leases since November of 1961?

A. No, sir. They have operated on a verbal contract between Tennessee Consolidated and themselves, the authority being vested in me by reason of my being president, and the written leases have been drafted, they are approved by counsel, but they have not been issued.

Mr. Rowntree: Let me inquire is counsel's question related to the Pocket or to the Grays Creek?

Mr. Rayson: My question related to those mines 2818 which were in operation in November of 1961.

Q. Did not those mines?

A. No, there was no written lease with those, they operated under a verbal contract.

Q. Terminable at will from that point?

A. No, not terminable at will, because at that time they became a party to a supply contract to the TVA, sir.

Q. Did you have any actual discussion with them as to how much notice they would have to be given before termination?

A. They were assured of the supply of coal that they committed under the supply contract because they themselves made the bid.

Q. Who made the bond?

A. The bond was made by them and endorsed, I think, by Whitwell.

Q. Endorsed by one of your corporations?

A. By Whitwell Coal Corporation.

Q. Were you not president of that corporation at that time?

A. November of '61 I was.

Q. Yes. You have talked about the Whitwell Coal Company as an operating company. As I understand it, Whit-

well Coal Company was an operator of a deep mine back in the forties?

2819 A. Yes, sir.

Q. And then it ceased to an operating company and became the sales company for the small mines, for the truck mines?

A. Yes, sir.

Q. And then in 1958 you undertook to operate a strip mine through Whitwell Coal Corporation?

A. Yes, sir.

Q. As I understand it, then Tennessee Consolidated Coal Company purchased the equipment and leased it to Whitwell?

A. Correct.

Q. And Whitwell undertook to operate with that equipment?

A. Correct.

Q. Now, when did Whitwell Coal Company finally cease its operation as a strip mine?

A. Allen and Garcia Company, when it contracted with Tennessee Consolidated and placed Mr. Fitzgerald, resident managing engineer, on the property, took over the bossing of the Whitwell strip mine also along with Tennessee Consolidated and, if my memory serves me, either they terminated it in—I believe it was April of '62.

Q. April of '62. Had you not in the meantime arranged for the contract which this Whitwell Coal Com-

2820 pany was working under, contract T-12, to be supplied by your truck mines?

A. Yes, sir.

Q. I show you a letter and ask you if this is not a letter from TVA under which that arrangement substituting the truck mines for Whitwell was made?

A. Yes, sir.

Mr. Rayson: We offer that as an exhibit to Mr. Callis' testimony, Your Honor.

Testimony of Paul V. Callis—Cross

The Court: All right. Exhibit No. 296.

(The letter referred to above was marked D296 and received in evidence.)

Q. Do you know whether or not this supplement provided work for all of the truck mines which then recommenced work on your property, Mr. Callis?

A. No, I think there were one or two, possibly one or two that were not included in the supply on that contract, that is as my memory serves me, they may all be on there, looks like a good many of them are.

Q. All right. Now, this was August 30th, 1961?

A. Yes, sir.

* * * * * * * * * *

2821 A. I believe that is correct.

Q. There had been no contracts for them to fulfill since the expiration of this contract in March of 1950?

Mr. Rowntree: 1950?

The Court: 1950?

Mr. Rayson: 1960.

A. If, as my memory serves me, it seems to me that there was a direct bid by those individual operators and I believe they got some awards direct in their own name, I'm not sure about that, but

Q. (Interposing) Do you recall whether or not these operators had had a contract which expired in 1960, March 1960?

A. Oh, yes, March 15th, I think, wound it up.

Q. And they did not work again until you arranged for them to fulfill a portion of the contract T-12?

A. I can't be sure of that, because I know that when Allen and Garcia came on the property the T-4 contract had been terminated and I am trying to recall exactly what tonnage that Allen and Garcia produced, what contract it went on, and that's what has me confused about this.

Q. All right, sir.

A. If it is true that should state that they are supplying

on T-12, and I know they did, but as to when they started, I am not positive about it.

2822 Q. In any event, you do recall that this supplement included the Higgins and Flynn mines?

A. Yes, sir.

Q. Now, in the meantime had not Whitwell Coal Corporation continued its strip-mining operations in 1960 and 1961 and perhaps even after that?

A. Yes, sir.

Q. When did you form the Grundy Mining Company?

A. First of all, I didn't form it, it was formed under Mr. Hampton's and Mr. Roberts' administration in 1959, as I recall.

Q. Well, you were a director and vice-president at that time?

A. Yes, sir, but there was a change of the chief executive officer of the corporation and when you direct a question, when you say, "Did you form it?" I didn't form it.

Q. All right, sir. You were working rather closely with Mr. Hampton during all of this time?

A. Yes, sir.

Q. You and he worked out of the same office. I believe that Mr. Hampton is your father-in-law?

A. That is correct.

Q. And when was it that you say that Grundy Mining Company was formed?

A. As I recall, it was the last half of 1959, some-
2823 time in the last half of 1959.

Q. Was this corporation not a wholly-owned subsidiary of Tennessee Consolidated?

A. It is wholly owned.

Q. Organized with $1,000 in capital stock?

A. Whatever the minimum requirements of the law.

Q. All right. Now, it was your purpose as I understood your testimony, to somehow separate Tennessee Consoli-

dated from operations through this corporation, Grundy Mining Company?

A. The stockholders and directors of Tennessee Consolidated made the decision to go out of the mining business completely and, therefore, the officers were directed to organize Grundy Mining Company and for Grundy Mining Company to assume all of the direction of the mining and responsibility for the mining that Consolidated would remain as a land company, mineral company, and so forth, but no operations, and that all machinery and everything was to be run by Grundy.

Q. So Tennessee Consolidated by this method removed itself from the scene as a coal mine operator?

A. From what?

Q. From the scene as a coal mine operator.

A. That is correct.

Q. Who was the president of Grundy Mining Company?

A. Whoever was president of Tennessee Consoli-
2824 dated.

Q. Was not Mr. Harwood president of this corporation for a time?

A. In its early days, in the organizing of it and so forth, I believe you are correct.

Q. Was not Mr. Harwood president of this company in August of 1960?

A. Yes, sir, I believe he was.

Q. This is Mr. Judson Harwood, an attorney in Nashville?

A. That is correct.

Q. Did Mr. Harwood have the authority to open some mines in the Grays Creek area in August of 1960?

A. Yes, sir.

Q. Was he serving as an attorney in the opening of these mines or was he serving as an executive officer of Grundy Mining Company?

A. I think he was serving as both.

Q. Do you know if Mr. Harwood made arrangements on August 13, 1960, to employ Mr. Gibbs?

A. Yes, sir.

Q. Were you working with Mr. Harwood on this?

A. I would say yes.

Q. Did you know that Mr. Harwood at about the same time that he contacted Mr. Gibbs also contacted Mr. Ted Wilson, a lawyer in Oneida, Tennessee?

2825 A. At this time I was not president of the company, right?

Q. I didn't ask you that. I asked you if you knew whether he had contacted Mr. Wilson of Oneida?

A. No, sir.

Q. Did you later learn that he had?

A. He informed me that he had.

Q. Did he do that on his own or did he do this with the consent and agreement and knowledge of the officers of Tennessee Consolidated Coal Company?

A. He did this on his own.

Q. Did you disavow this action on Mr. Harwood's part?

A. Did I disavow it?

Q. Yes. Or was it ever disavowed?

A. Not that I know of.

Q. Did you know who Mr. Wilson was at that time?

A. Yes, sir.

Q. Did you know whether he held some role in an organization known as the Southern Labor Union?

A. Yes, sir.

Q. Did you know the purpose of Mr. Harwood calling Mr. Wilson?

A. Yes, sir.

Q. Was that purpose not to obtain a contract with

2826 the Southern Labor Union for men to be employed by Grundy Mining Company?

A. His original, as he told me—understand every bit of this is hearsay to me—Mr. Harwood informed Mr. Hamp-

ton and myself that he had called the Southern Labor Union for coal miners to work, if they had any that were willing to work because he was unable to get a response from any of the local miners in the area of Palmer.

Q. Why, Mr. Callis, Mr. Harwood, neither Mr. Harwood nor you or anyone else had issued any call for miners to come out to work at Grays Creek, had you?

A. I wasn't the man that issued the orders.

Q. You know that to be the truth, don't you, Mr. Callis?

A. No, I can't say that.

Q. And all of this transpired some two days before the company undertook to open these mines in Grays Creek?

A. My memory is starting to clear up on this point you just made. If I may amplify that a little bit, Mr. Harwood first employed Mr. Stanley Meeks, Mr. Stanley Meeks.

Q. I am talking about August of 1960, Mr. Callis.

A. I am talking of August, 1960, and Mr. Stanley Meeks had direct negotiations with officials of District 19 and proposed his men, who were members of the United Mine Workers, who worked for him, to go to work for
2827 Grundy Mining Company and the District 19 officials would not permit it without first going through all of the panel lists of Tennessee Consolidated Coal Company, which was not related to Mr. Meeks in any way, shape, or form.

Now, therefore, to back up my statement, the members in and around Palmer, the local people, did refuse to work for Meeks, who was hired by Harwood.

When he failed to be able to open those mines, then Mr. Paul Gibbs was hired and Mr. Paul Gibbs went through the same procedure and it was only after he could not get local people that he called and asked Southern Labor Union did they have coal miners that they could supply to man these mines.

That's the truth, Mr. Rayson.

Mr. Rayson: May I have a moment?

A. To the best of my knowledge. That is a long time ago.

Q. If this Mr. Meeks had been involved in a matter in 1959, as you are now describing, rather than 1960, you would be mistaken, is that correct?

A. I stand corrected.

Q. And it wasn't in 1960?

A. I stand corrected.

Q. And there was no announcement to any of these men of any opening of the Grays Creek mine in 1960, any
2828 of your men that had worked for Tennessee Consolidated for many, many years?

A. I can't agree with you on that.

Q. Now, you testified that you had a meeting with some truck mine operators in Murfreesboro on the 15th?

A. I think I said the 15th or 16th.

Q. You participated in that?

A. Yes, sir, I met with them.

Q. You personally participated in that meeting?

A. Yes, sir.

Q. At that meeting, Mr. Harwood announced that arrangements were being made with Southern Labor Union to man the Grays Creek mines?

A. To get some workers.

Q. I believe you have said that a day or two later you came to the Palmer-Tracy City area?

A. The next day, as I recall.

Q. The next day. Do you know whether or not when Mr. Gibbs undertook to work in Grays Creek there was a picket line there?

A. I was told that he was stopped by a picket line.

Q. You were informed of that before you came back to Palmer and Tracy City?

A. Yes, sir.

Q. You have testified that you and Mr. Allison
2829 went to Palmer to meet with Mr. Roberts at the commissary?

A. To meet with him at the office.

Q. To meet with him at the office?

A. Which we did do.

Q. Did you also testify that you walked across the street to the commissary?

A. Yes, sir, after the meeting.

Q. And did you also testify that when you came out of that office you were accosted by one Mr. Geary?

A. M. L. Geary, yes.

Q. Is he a long time employee of your company, or one of them?

A. Yes, sir.

Q. Are you saying that the United Mine Workers put Mr. Geary up to that, Mr. Callis?

A. I didn't say that.

Q. Mr. Geary was under the influence at that time?

A. Yes, sir.

Q. As a matter of fact, Mr. Geary was employed as a guard by one of your companies then, wasn't he?

A. Was what?

Q. A guard to guard over the commissary?

A. He was an employee in some way, I really don't know what his job was, but he was doing a good job, whatever he was doing, he was an employee.

2830 Q. And hadn't he just before that a short time been accused of some wrongdoing in connection with his employment, pilfering some property or something?

A. I don't recall Mr. Geary ever being accused of anything.

Q. Hadn't he been accused of something or hadn't he been criticized for something by company officials just before this very incident that you are talking about?

A. Not that I recall. Tell me what it was.

Q. Wasn't Mr. Geary mad at you because of some personal reason that had developed in his employment?

A. I recall that he was upset about something, but would you mind telling me what it was?

Q. My recollection is that it involved some accusations that the company had made of him, made to him. Does this not ring a bell with you, Mr. Callis?

A. Yes, sir, it rings a bell and both Mr. Geary and his wife apologized, it was a complete misunderstanding.

Q. Exactly so. And so this matter of Mr. Geary grabbing you by the arm and pulling you around and threatening you and using profane language has nothing to do with any of this, has it, Mr. Callis?

A. Oh, yes, it does, Mr. Rayson. There was over a hundred and twenty-five men there with guns.

Q. Well, Mr. Geary—

2831 A. (Interposing) I tell you, I was scared to death and don't you think I wasn't.

Q. But Mr. Geary was the one that was doing all of the talking and this stemmed from some personal grievance he had, didn't it?

A. No, sir; no, sir. You are wrong about that. His brother got up and got on one side of us and he got on the other and I was actually assaulted.

Q. By Mr. Geary?

A. Yes, sir.

Q. Mr. Madewell wasn't there, was he?

A. I did not see him.

Q. He wasn't there, was he?

A. No, sir.

Q. Neither was Mr. Gilbert, was he?

A. I can't say. You are saying that. I don't know, I didn't see him.

Q. You were there. You didn't see Mr. Gilbert there, did you?

A. No, sir.

Q. You didn't see any representative of District 19 or of the United Mine Workers?

A. Yes, sir, they were all United Mine Workers.

Q. They were your employees, weren't they?

A. And they gathered there in less than 30 min-
2832 utes after we arrived in town, the buildup was so rapid when they learned that Paul Callis was in town that it was obvious. It wasn't over Mr. Geary's ill feeling about a misstatement which he apologized about.

Q. Mr. Roberts was with you, wasn't he?

A. When I traveled inside going into the commissary, he was. When we said good by he went to the meat counter to buy some groceries and meats. I walked out with Mr. Allison by myself, the two of us were by ourselves. I stepped on the outside to speak to Mr. Morrison, who was a foreman for the company for many years, why, he was so scared he couldn't even talk.

Q. Mr. Morrison was one of the men that you later found was a silent partner in some of these mines?

A. Yes, sir.

Q. Did you accuse Mr. Roberts that day of fomenting any of this trouble?

A. No, sir.

Q. Did you later?

A. Yes, sir. I went over, by instructions of the board of directors and the executive committee to attempt to work out and straighten the matter out directly with Mr. Roberts, and that was done.

Q. And you later learned that Mr. Roberts had gone to some of these truck mine operators and had told them
2833 that this Gibbs' development in Grays Creek was going to wipe them all out?

A. Who said this?

Q. You learned that, didn't you, as a part of your investigation?

A. By hearsay, yes.

Q. And you accused Mr. Roberts of that?

A. I don't know that I accused him. We may have discussed it.

Q. You told him that?

A. I may have discussed it with him as a business procedure, a business matter, if it affected the goodwill of the company.

Q. You told him that you thought it was rather unusual for the executive vice-president of the company to foment picket lines, didn't you?

A. Well, first of all, he was not the executive vice-president.

Q. Vice-president then.

A. I had many discussions about the operations end of the business with Mr. Roberts at that time. He invited me to because he had been sick.

Q. Your election as president occurred when, Mr. Callis?

A. The mid — the June meeting, May or June
2834 meeting of '61, late May or early June of 1961.

Q. Did Mr. Hampton resign or retire at that time?

A. Mr. Hampton was elevated to the chairman of the board.

Q. Did this stem from some dissension on the part of your directors?

A. No, I think it was a business judgment.

Q. In any event, you then became president?

A. Yes, sir.

Q. And chief executive officer of the company?

A. Yes, sir.

Q. Where does Mr. Hampton live at this time?

A. Lynwood Boulevard in Nashville, Tennessee; Lynwood Terrace, Nashville, Tennessee.

Q. Was Mr. Roberts out as manager of the company from that time?

A. Mr. Roberts was made executive —

Q. (Interposing) Chairman of the executive committee?

A. Chairman of the executive committee. I was in-

structed to operate the company under directions of the executive committee.

Q. Now, this occurred in June of 1961 and, as I understand it, meanwhile you had entered upon negotiations with Allen and Garcia?

2835 A. No. Allen and Garcia negotiations took place between February and April and a contract, I think, was arrived at on April 4th.

Q. I say, meanwhile or prior to your election as president these negotiations had been conducted between Tennessee Consolidated Coal Company and Allen and Garcia?

A. Yes, sir.

Q. Were you instrumental in inviting that company in to make an examination of your property?

A. I was instrumental in the sense of being questioned by certain stockholders and directors as to what could be done and what should we do as a director. I advised that since Mr. Roberts had had a double cataract operation and his nervous system shocked, Mr. Hampton was in ill health, the thing to do was to bring in — and all the problems with the National Bituminous Wage Agreement and we can't run the mines and everything shut down, that we bring in the finest engineering firm that could provide an operating manager to take over the operations and run the coal mines.

Q. Now, tell us when you made this approach to Allen and Garcia?

A. I recollect that this action started sometime in the months of January or February of '61. Robinson and Robinson were considered because Neal Robinson is a very close personal friend of mine. I personally objected

2836 to Robinson and Robinson because they were retained by the United Mine Workers on some technical representation in other lawsuits and in other mine fields. I know Neal Robinson personally, I know his father.

Q. You objected to them because Robinson and Robinson had offered services as a witness in one case?

A. No, they were retained and had done much consultant work with the Mine Workers.

Q. All right. In any event, you employed Allen and Garcia?

A. Yes, sir.

Q. Does this lead to a report by Allen and Garcia, a report to your company on February 3, 1961?

A. There was a report submitted, I think, by Allen and Garcia after Mr. Fitzgerald had come to the area, inspected the mines and had discussions with Mr. Hampton and myself. I think Mr. Beaumont and Mr. Roberts had gone underground and talked with some of the men and he did submit a report.

Q. Made a rather extensive investigation of the situation, didn't he?

A. Yes, sir, he went underground with men assigned by Mr. Roberts.

Q. I take it he had talked with you rather exten-
2837 sively?

A. Yes, sir.

Q. Went over your mine maps and things like that?

A. Yes, sir.

Q. Now, did Mr. Fitzgerald recommend to your company to undertake certain mechanization?

A. Allen and Garcia recommended to the board of directors whatever was done, and he was their official on-the-spot man.

Q. Was it the opinion of Allen and Garcia that your company could be operated profitably?

A. Yes, sir.

Q. Did this opinion, was this opinion based upon the requirement of the National Bituminous Coal Wage Agreement?

A. Yes, sir.

Q. As a matter of fact, Mr. Fitzgerald stated to you that

in his conservative judgment you should be able to produce 17 tons per day?

A. Yes, sir.

Q. And mine coal at $3.60 a ton f.o.b. Palmer?

A. If that's what is written in there. I don't know the exact figure, but it was well—

Q. (Interposing) That sounds about right, doesn't it?

A. The report looked awful good.

Q. Did you enter into a contract with Allen and
2838 Garcia?

A. Tennessee Consolidated entered into a contract with Allen and Garcia.

Q. Under that contract was Allen and Garcia to be paid a fixed fee?

A. It was a 2-way arrangement, as I recall, it was a fixed fee, but it was to be bumped against tonnage; in other words, as the production got going if they became successful, it would then revert on a per-ton base.

Q. Well, was not —

A. (Interposing) In other words, it had a maximum and it had a minimum, but it had incentive in it on a per-ton basis to get the production rolling.

Q. Their main anticipated compensation came from a royalty they would receive based on a tonnage basis?

A. With a maximum and minimum.

Q. All right, sir. Now, under this contract, did Allen and Garcia become the operating agents of Tennessee Consolidated?

A. I don't know whether you would call them agents or not, I mean this is very technical.

Q. Well, operating managers?

A. They were operating managers and they had the full control in running of the operation.

Q. Well, now, in operating this mine, however,
2839 Allen and Garcia wasn't paying the employees, were they?

A. No, sir.

Q. That was the responsibility of Tennessee Consolidated?

A. At their direction.

Q. And, of course, Allen and Garcia had the authority to enter into contracts for the purpose of supplies?

A. Yes, sir.

Q. Which then would become the responsibility of Tennessee Consolidated to pay for?

A. Yes, sir.

Q. And Allen and Garcia also had the authority to enter into agreements with the United Mine Workers, didn't they?

A. Yes, sir.

Q. And they did so?

A. Yes, sir.

Q. They entered into the agreement in May of 1961, correct?

A. I believe it was May the 5th, I don't want to be positive, but that's what I remember.

Q. Now, you testified that this was the agreement, the standard United Mine Workers agreement?

A. This was the National Bituminous Wage Agreement as amended.

* * * * * * * * * *

2854 Q. During the fall of 1962, or the summer of 1962, I believe that you opened some new mines on the property of Tennessee Consolidated Company, did you not?

A. Are you speaking about the small mines?

Q. Yes, sir.

A. I think we started on those before that time, Mr. Rayson.

Q. When did you start on them?

A. If my memory serves me, I believe we started on it in the fall of '61, No. 11 mine, we started in '62, but we were building those small mines before that time.

2855 Q. And you had agreed, or your operating mana-

ger had agreed in this memorandum of understanding that the other mines that were to be opened on Tennessee Consolidated Products were to be opened under the same contractual arrangement? You did not discuss these new mines with the United Mine Workers, did you, the Grundy mines?

A. I didn't.

Q. Well, no one else did, did they?

A. I don't know whether Allen and Garcia did or not.

Q. What about Grundy Mining Company?

A. They had—

Q. (Interposing) Did they?

A. They had no commitment to you.

Q. Oh, you mean that Grundy Mining Company had no obligation under any of the arrangements that were made by Allen and Garcia, is that it?

A. I didn't say that. I said there was no contractual commitment between the United Mine Workers and Grundy Mining Company.

Q. You regarded Grundy as being entirely different and separate and distinct from Tennessee Consolidated and Allen and Garcia?

A. I didn't say that.

Q. How many of these mines did you open for Grundy Mining Company at that time?

2856 A. Approximately 12 to 15.

Q. You didn't give your former employees an opportunity to work in those mines, did you, you didn't hire them, did you? Yes or no.

A. I would say I can't answer that yes or no, Mr. Rayson. I'd like to, but my memory doesn't serve me clearly. I know that we offered employment to every man by registered letter. Now, whether it covered every man.

Q. When did you do that?

A. It was every man that was on the company's payroll.

Q. You operated those—

A. (Interposing) And we sent out registered letters and offered them work, they just never came to work.

Q. You operated those Grundy mines in face of that agreement that Allen and Garcia had made with respect to opening other mines on your property on a non union basis, didn't you?

A. After the United Mine Workers just absolutely would not provide workers and they would not negotiate a contract because of necessity that had to be somewhat different from the National Bituminous Wage Agreement.

Q. Did Grundy Mining Company ever seek to negotiate a contract with the United Mine Workers over those truck mines, Mr. Callis?

2857 A. I think Grundy Mining Company, as far as I am concerned, was still sitting in the negotiating room in Chattanooga when you people were demanding 50 cents a ton.

Q. I thought you told us yesterday that Grundy wasn't a member of the Sewanee Coal Operators' Association?

A. They are not, they never were. They were a qualified member. It was very, very careful that we did not associate with it because of involvement in the NLRB case. We never did permit it to be associated with them.

Q. Well, now, let's go back to the time that you were opening up these mines, Mr. Callis, so that the record will be clear.

I want to ask you if you did not open up those mines wthout consultation with the union and if you did not open up those mines without a union contract?

A. Yes, sir, we opened them without a union contract.

Q. And this was one of the reasons and one of the things that led to some distress in the fall of 1962?

A. If you want to describe it that way.

Q. You say that you saw Edwin Ross out there one afternoon?

A. Edwin Ross was on the picket line. When I asked

for the official who was in charge of the group, nobody would speak.

Q. By the way, did you ever see Howard Made-
2858 well out there?

A. Yes, sir.

Q. About the same time, the fall of 1962?

A. I am not sure whether Howard was with Edwin that day or not, I really am not sure.

Q. Well, are you familiar with the fact that you were complaining to the International union about these picket lines and Allen and Garcia was complaining about them?

A. Yes, sir.

Q. And weren't you calling upon the International union to send somebody out there to see what was going on?

A. Well, certainly.

Q. And it was after that you saw those men out there, wasn't it?

A. I was calling on it, no question about it, but I didn't call on them to build the picket line to shut the mine down, I was asking—

Q. (Interposing) All you saw was those men out there talking to those miners. Madewell and Ross were out there talking to those men, weren't they?

A. I am sure they were talking.

Q. That's what you saw, wasn't it?

A. I saw them out there talking, that's right, they were doing that.

Q. Now, this conversation you had with Ross at
2859 this time that you were out there with respect to these various truck mines of Grundy Mining Company that you were talking about?

A. Yes, sir, I was out there, in fact, I informed all of those men who were standing on one side that were, you might say, foremen for Grundy, I was president and these workers, I told them to, "Go on and go to work, the federal

injunction was on this issue and these people have no business interfering with you. Now, you go on and go to work."

And I turned back to Edwin. I said, "Now Edwin, I have known you long enough for you to come to my office and we can talk over any problems. This isn't any place to do business out here in the middle of the woods, and you have no right to interfere with these people. It ought to be settled in an orderly manner."

Q. You said you had an injunction, you say?

A. I had.

Q. Federal injunction?

A. I think Grundy Mining Company did, I think there was at this point, I could be mistaken whether it was in effect that day, but I know that there was one issued.

* * * * * * * * * *

2860 By Mr. Rayson:

Q. You told Ross that day, did you not, that you were going to form an association for all of these coal companies around there to bargain? This was in September of 1962?

A. I didn't tell him I was going to form one. I said there was one in the process of being organized by all of the operators in southeast Tennessee so that an orderly negotiation for a workable contract for these people in this area could be worked out.

Q. And subsequently—

A. (Interposing) And I did not organize the Sewanee Coal Operators.

Q. Mr. Ables was your counsel about that time, wasn't he?

A. Yes, sir.

Q. Mr. William Ables. Didn't he become the executive secretary of this association?

A. I don't know what his official title was. If it was, yes, I agree he was very active in it and ran it and looked after it.

2861 Q. By the way, wasn't Mr. Ables serving as a personnel representative for your company at that time employing employees?

A. No.

Q. You don't recall that?

A. Well, he wasn't a personnel man. He was not an officer there, he was never an employee as such, he was retained counsel and advising.

Q. With respect to the employment of employees, wasn't he—

A. (Interposing) Just like I would hire a man and send him to the doctor for a physical. Well, I sent them to Mr. Ables to be sure I was not getting messed up with the legal complications, we had lawsuits flying and this NLRB stuff going in all directions, that's why they went to Mr. Ables.

Q. Didn't you engage Mr. Ables to prepare some contracts for these truck mine operators who were taking over these Grundy mines?

A. At the suggestion of counsel, I did.

Q. And also with respect to the employment of employees of these mines, truck mines?

A. Yes, sir.

Q. I want to show you a contract form and I will ask you if that wasn't one of the contract forms that
2862 you used?

A. We had two forms that were drafted and this one not being filled out I could not say that this was actually the one that was used or the corrected one.

Q. Well, I believe that that was given to us in response to pre-trial inquiries by your office, was it not?

A. I can't say that it was or not.

Mr. Rayson: Does counsel acknowledge that that is the case?

Mr. Rowntree: I believe that we did.

By Mr. Rayson:

Q. Was not this very same form used by Howard Higgins, among others?

A. I think if that is the form, I think it was generally used.

Q. This was the form that was being used in the summer and fall of 1962 to recruit employees for these Grundy mines?

A. If you say so.

Q. If you say so? Is it or was it not?

A. You see, I am not sure that that is the form. I agree that a form was used.

Mr. Rayson: We offer that as an exhibit to Mr. Callis' testimony.

The Court: All right.

2863 Mr. Rowntree: If Your Honor please, I don't know exactly what form we provided. I think we provided a form, but I don't know whether it is that one. Did we provide another form with that one?

Mr. Rayson: You may have. You may have. I would state that this form, according to my information, was identical to a form signed by Howard Higgins. Now, we were not furnished the form that Higgins and his employees signed, but it is my understanding that that is the case. How many others used it I don't know. I would seem to think we could stipulate on that point.

Mr. Ables: May I state on the record what is correct on that?

Mr. Rowntree: Mr. Ables, I suppose, could give the best evidence, but he is not on the witness stand.

Mr. Rayson: Well, we would like to proceed, Your Honor.

The Court: That would be Exhibit No. 297.

(The document referred to above was marked D297 and received in evidence.)

By Mr. Rayson:

Q. Do you recall that you did give this operators employ-

ment at these various mines, these Grundy mines initially, did you not, as foremen?

A. Yes, sir.

2864 Q. And under the same arrangement they had an option to purchase the mine and become operators?

A. Not to purchase the mine but to—

Q. (Interposing) Lease?

A. Acquire a lease, yes, sir.

Q. And in this same form that you used with the employment of your employees this fact was recited, was it not?

A. The fact that we used that form or—

Q. (Interposing) No, the fact that these foremen who were employing these men had an option, or do you recall?

A. The foremen that had an option to lease the mine after the mine was developed, while the mine was being developed, Grundy paid the bills, they drew a foreman's pay of $25 a day and, yes, they had an option.

Mr. Rayson: Your Honor, I desire to read parts of Exhibit 279. This agreement has several "whereas" provisions reciting that the employer has an option for the opening of a mine. The contract itself is an agreement between the employer, that is, the optionee, and blanks where several names could be signed.

The agreement then goes on to provide for the terms and condition of employment of employees, that they were to do general mine work.

"2. The employees are to receive and agree to

2865 this for a regular day's work, wages based on the Fair Labor Standard Act and/or Walsh-Healey Act, which is the minimum wage as determined by the Federal Government statutory in this area.

"3. This contract shall last for a period of five years, or until such time that said mines under option are worked out, if earlier than 5-year period."

I believe that is all, Your Honor.

Mr. Rowntree: Read the next paragraph, "It is specifically understood that the employees shall be called to work within a 30-day period and shall be offered employment regularly during the 5-year period, if employment is available and the mines are in operation, and the said employer has orders to fill for the sale of coal."

Mr. Rayson: I might point out further in the contract it does reserve the right to these employees in paragraph 8, which reads as follows, "It is further specifically understood that the employees are not obligated to stay for the 5-year term and upon notifying the employer that he wishes to seek employment elsewhere, that right is specifically reserved to him to seek employment elsewhere at any time he so wishes."

By Mr. Rayson:

Q. When did the United Mine Workers' contract with Allen and Garcia expire, Mr. Callis?

2866 A. I think we brought that up yesterday and I mentioned the date of sometime in October of '62.

Q. Was it on or about October 24th?

A. No, I believe it was September the 26th. I found that I refreshed my memory on that, and I believe the correct date is September the 26th—September 21st.

Q. Was that the cancellation of Allen and Garcia's contract with Tennessee Consolidated? I realize that these dates are difficult for you to remember.

A. Yes, sir, as managing operators of the property, yes, sir, that was the end of that contract.

Q. All right.

A. They were retained on a retainer just to consult.

Q. Now, had the UMW agreement expired at that time?

A. Yes, sir, I believe it had, whatever period of time that it was still in effect.

Q. Did not that agreement continue in effect until October 24th or thereabouts?

A. It sure did, and we respected it.

Q. Grundy, however, took over the management of the mine from Allen and Garcia in September, latter part of September of 1962?

A. Yes, sir.

Q. Now, you didn't acknowledge that you were bound by that agreement initially, did you?

2867 A. You mean—

Q. (Interposing) Grundy Mining Company did not acknowledge that it was bound by the United Mine Workers' agreement initially?

A. I don't think so.

Q. And so actually there was no, as far as Grundy was concerned, there wasn't any collective bargaining agreement in there when it first took over?

A. That's right.

Q. And it was taking the position initially that it wouldn't bargain with the United Mine Workers for the employees at the Grays Creek mine unless and until the union's majority status was shown in an NLRB election?

A. That could be. I know we started in, we were trying to get an election.

Q. And some of the employees weren't working about that time, isn't that right?

A. Some of the employees were not.

Q. Yes, sir. At Grays Creek No. 11?

A. Some were and some weren't. Excuse me. What was your question?

Q. Were not the employees at Grays Creek No. 11 out for a while in early October?

A. Went out after Allen and Garcia—

Q. (Interposing) I am talking about not working

2868 in early October. Weren't the employees in the Grays Creek mine not working?

A. Now, are you speaking of No. 11 mine or are you speaking of—

Q. (Interposing) No. 11 mine.

A. I didn't think we had an interruption then.

Q. Didn't you send a telegram to Mr. Ridings about the 16th of October that has been admitted in evidence here stating that you were calling upon him to do something in respect to these employees?

A. Keep them at work. We would negotiate or something, is that what you mean?

Q. Do you not recall meeting with Mr. Ridings and Mr. Turnblazer in Nashville at Mr. Harwood's office on October 10?

A. Yes, sir.

Q. And wasn't the subject of that meeting whether or not the UMW agreement was applicable to the Grundy operations at Grays Creek 11?

A. I believe that was the subject.

Q. Didn't you there and then acknowledge that you would consider that agreement to be—

A. (Interposing) I don't think I acknowledged anything there.

Q. What about Mr. Harwood?

2869 A. Mr. Harwood was president then.

Q. Well, let's ask you if Grundy acknowledged that at that meeting that the agreement would be considered as applicable?

A. I don't recall that, Mr. Rayson.

Q. And didn't—

A. (Interposing) You are—

Q. (Interposing) Didn't Mr. Ridings at that meeting tell you that those men were willing to go back to work at any time you wanted to open up that mine and that he had personally got up and gone all the way from Middlesboro down there to meet with those men to arrange for them to go back to work on the 10th day of October?

A. Well, what year?

Q. 1962.

A. As I said, I did not think it was an interruption then.

I thought they went right on working and that we worked right along and tried to arrive at negotiations over here at Chattanooga.

Q. Were you asking—

A. (Interposing) We respected your scale of wages and what-have-you, but we did not acknowledge being a signatory to your contract, never did.

Q. You were—

A. (Interposing) Grundy Mining Company has
2870 never had a contract with the United Mine Workers, to my knowledge.

Mr. Rowntree: May I ask if counsel is asking about the old contract that Allen and Garcia had?

Mr. Rayson: I am talking about the Allen and Garcia contract, Your Honor.

A. Allen and Garcia cancelled it.

Q. But was not that contract cancellation period of 60 days, did not that extend over into the period of time that Grundy was operating that mine?

A. Yes, there was a month's period there.

Q. All right.

A. We notified—

Q. (Interposing) Did you or not—

A. (Interposing) We notified you we wanted the men to continue working, that we would not change the scale of wages, but we did not sign a contract with you and we were not going to respect the United Mine Workers with respect to having a contract, and that is why the meeting in Harwood's office, as I recall. I could be wrong, but—

Q. (Interposing) But you were calling upon the union to get those men to work over there even though you weren't prepared to recognize the union as bargaining agent for the men?

A. Because I wanted to negotiate it, I wanted to find out what could be done on a scale, I just didn't want

2871 to have it shoved at me like you always did, "Sign it."

I wanted a little chance to talk about it.

Q. Mr. —

A. (Interposing) I hadn't had a chance to talk about it, never have had one.

Q. Mr. Callis, weren't you telling the union in one breath that you weren't going to recognize the union at all until it was certified by the NLRB?

A. I am never going to sign any contract, Mr. Rayson, until I know what I am signing. You people want these coal people to sign contracts without giving them a chance to talk about it, and you have been doing it for years.

Q. Well?

A. That's all I wanted.

Q. Let me see if you can't answer my question now, Mr. Callis. Listen to my question.

Weren't you telling the United Mine Workers that you were not even going to recognize it as bargaining agent until the United Mine Workers was certified by the NLRB?

A. No, sir, Mr. Harwood did that talk, I didn't say that.

Q. It wasn't a question of negotiation then, it was a question of recognition, wasn't it?

A. That's what I think the union was trying to force.

Q. Wasn't that what Mr. Harwood was saying?

2872 A. I can't tell you what Mr. Harwood said.

Q. Well, you were there, weren't you?

A. That's all hearsay.

Q. I am asking you if this is what your attorney said with respect to recognition?

A. I was present in that meeting and I did not talk.

Q. Did you listen?

A. We surely did.

Q. Wasn't that what Mr. Harwood said?

A. Not as I recall it.

Q. Did you not send Mr. Ridings a telegram stating that

you would not recognize the union until it was certified by the NLRB?

A. The telegram will speak for itself.

Q. Well, do you recall?

A. I don't recall.

Q. Whether you did or not?

A. I don't recall it.

Q. So you were not prepared to negotiate. You wanted the union that had represented the employees of this mine and its predecessors for some 30 years to go to the NLRB to see if it represented a majority?

A. Not that. I asked them to meet in Chattanooga.

Q. There wasn't any question in your mind at this time, was there, Mr. Callis, that the union represented a
2873 majority of the employees at Grays Creek No. 11?

A. No question.

Q. No question whatsoever?

A. No, sir.

Q. Now, you say that Grundy did not become a member of the Sewanee Coal Operators' Association?

A. It was a qualified member.

Q. A qualified member?

A. Yes, sir.

Q. You say that Tennessee Consolidated did not become a member?

A. Qualified member.

Q. Are you saying now that both of these companies became qualified members?

A. Yes, sir.

Q. Did either Grundy or Tennessee Consolidated or any of its officials take any part in the conduct of the affairs of the Sewanee Coal Operators' Association?

A. Mr. Houston Beaumont, a vice-president of Tennessee Consolidated, served in some official capacity or as a board member. He can, of course, speak for himself, but, as I recall, he was active in the affairs of the association.

Q. He and Mr. Ables were the spokesmen for the organization?

A. Do you mind if I finish?

2874 Q. No, sir.

A. He served with the association and it was made extremely clear that he was serving as an individual and not as an official of either Grundy or Consolidated and I think you will find that in some of the records, that is what I remember.

Q. You mean he was just going down there out of the general interest he had?

A. I am not—

Q. (Interposing) Not at the time or expense of your company?

A. Certainly he was on the expense of the company, he was an official of the company and he was looking after that qualified membership of the company.

Q. He was down there leading the negotiations, wasn't he, with Mr. Ables?

A. I wasn't there.

Q. Wasn't that the report to you?

A. I don't know that he was leading.

Q. And you know, for example, that these publications that were spread out all over the area, these letters and things to employees and everybody else, by the Sewanee Coal Operators' Association were prepared and mailed out of your office, weren't they, in Tracy City?

A. Possibly some were.

2875 Q. At the expense of your company?

A. No, I don't say that they were mailed at the expense of my company.

Q. You mean your company billed the Sewanee Coal Operators' Association for that?

A. I think the expenses were borne, a great deal of them, by other operators.

Q. Truck mine operators on your property?

A. Both properties.

Q. You do know that the United Mine Workers sought to be certified as bargaining representatives for a group of operators in the southern Tennessee area, which comprised the Sewanee Coal Operators' Association, you know that?

A. I know that the United Mine Workers were ready for an election with the Grundy Mining Company in January and February of '63 and all of a sudden when they found they couldn't vote those workers reversed the position and went for a multi-box under the Sewanee Coal Operators.

Q. You know that the United Mine Workers had sought to represent initially, back in October when you first took it over and were saying that the union didn't represent a majority of the union, sought an election at Grays Creek 11, didn't it?

A. The union sought an election at Grays Creek
2876 11, and —

Q. (Interposing) That was the petition before the National Labor Relations Board?

Mr. Rowntree: Let him answer.

Q. Was that the petition before the National Labor Relations Board?

A. The record of all that speaks for itself. I am not disagreeing with you or all you are trying to do is talk about one way the union went. I am telling you that the union reversed itself because they knew they couldn't get a majority of the workers at Grundy Mining Company and they wanted to pull in all of the other companies in southeast Tennessee in a multi-box, which they never had — you had contracts direct with all of the small mines and you wanted to vote all of the retired Welfare workers.

Q. Mr. Callis, didn't the union seek to have the multi-employer bargaining group after you and your associates formed a multi-employer bargaining group?

A. Yes, sir.

Q. And didn't the NLRB sustain the union's position in that regard?

A. The record will speak for itself.

Q. What is your knowledge on that?

A. That the election was awarded to the United Mine Workers.

Q. That the bargaining unit was found to consist
2877 of the members of the Sewanee Coal Operators' Association, including Grundy Mining Company?

A. No, that is not what the order was. If you are going to quote that order, you better read it from the order because it has been amended.

Q. Did your employees, Grundy Mining Company employees, vote in that election?

A. Some of them. Some of them were unable to, they were threatened.

Q. Did the other truck mine employees vote in that election?

A. What other ones are you speaking of?

Q. The other members, the other employees of the other members of the Sewanee Coal Operators' Association?

A. Some of them.

Q. And did the United Mine Workers win the election?

A. Yes, sir.

Q. And after that election was won, didn't Mr. Turnblazer write to you and ask you if you were willing to negotiate with the United Mine Workers?

A. I received a letter.

Q. You didn't acknowledge it, though, did you?

A. No, sir, on advice of counsel.

Q. I show you this letter dated October 24, 1963. Do you recall receiving that letter, Mr. Callis?

2878 A. I believe I do remember receiving it.

Mr. Rayson: We desire to offer that as an exhibit to Mr. Callis' testimony.

The Court: All right. Exhibit No. 298.

(The letter referred to above was marked D298 and received in evidence.)

Mr. Rayson: This is a letter dated October 24, 1963, Your Honor.

Mr. Rowntree: Go ahead.

Mr. Rayson: I want to read it first.

By Mr. Rayson:

Q. Mr. Callis, do you recall that you sent out letters to a number of your employees shortly before this election firing them?

A. Firing them?

Q. Yes, some of the people, some of them that were then on strike.

A. Yes, sir, I believe it was nine men who had — they were released for disciplinary reasons.

Q. I believe that shortly after the election you wrote letters to these men or otherwise communicated to them that they could be re-employed?

A. That they could or could not?

Q. That employment was being offered them?

A. I offered them employment.

2879 Q. And it was subsequent to that that you received this letter from Mr. Turnblazer?

A. (Witness moves head up and down.)

Q. Is that correct?

A. I think so.

Mr. Rayson: Your Honor, Mr. Turnblazer addresses this letter of October 24, 1963, to Mr. Paul Callis.

"Dear Mr. Callis:

"I am in receipt of your letter dated October 18, 1963, which was sent to a number of your employees requesting that they return to work on Tuesday morning, October 22, 1963. In this letter you state that you recognize the unofficial results of the NLRB election in which the United Mine Workers of America received a large majority of

the votes. Although the NLRB has not yet certified the results, I feel that such action will be forthcoming in the near future. If the United Mine Workers of America is certified as the bargaining agent, I suggest that your designated representative should meet with us as soon as possible to settle all outstanding differences. At that time the United Mine Workers of America will be willing to discuss temporary working conditions pending the negotiations of a contract with your representative. We are just as eager as you are for all mines to resume the production of coal."

That is all of the letter I care to read at this time,

2880 Your Honor.

By Mr. Rayson:

Q. Now, that's the letter to which you did not respond?

A. On advice of counsel.

Q. Though you had told your employees that you were prepared to recognize and accept the initial count made in that election?

A. If you say so.

Q. You mentioned yesterday that when the strike started on December 26th, 1962, that you had understood that it was about some question concerning the checkoff of dues.

A. That is correct.

Q. Was not Grundy Mining Company checking off the dues of the union members at Gray's Creek No. 11?

A. At the time if they were or weren't I don't know, but I do know that when I received that phone call that morning it is my recollection that some of the men from the mine No. 11, who were members of the United Mine Workers, demanded that we check off their dues, and I told the superintendent that I would let him hear back from me in just a few minutes. This was early in the morning. I discussed it with counsel. Called them back and informed them that I had no contract that would permit me to tamper with the wages of those men.

2881 In other words, I had no authority to cut something

from their paycheck, however, that I was perfectly willing to receive an authorized cut slip from each man and that I would put that into effect if they would give me the authority and then I would remit the money to them and they could send it to the union but that I was advised by counsel that I could not because of no existing contract.

Q. Now, this was at the time when you, of course, realized —

A. (Interposing) December 26th.

Q. You realized all those men were members of the union, didn't you?

A. Yes, sir.

Q. And didn't you know that this dues question had been a question of some moment in the minds of those men for several weeks?

A. No, sir, it came as a complete surprise to me.

Q. You didn't know that? You didn't know that the men had, every one of them had signed a petition and had submitted it to your Tracy City office around the 1st of December?

A. Yes, I believe you are right, I do recall that.

Q. And that the company had refused to acknowledge this petition that had been submitted?

A. Upon advice of counsel, we refused.

2882 Q. So what you were doing at that time, Mr. Callis, was calling upon the union to continue these men at work without a contract and otherwise cooperating with you in every way and you weren't even willing to check off the dues that every one of these known union men had petitioned you in writing to do?

A. We were willing to check them off, Mr. Rayson. The technical point that you are sliding around is the fact that counsel advised the company and me as president not to remit the money direct on a company check to the union, that was acknowledgment of the contract. We were not denying the men their right to their membership in your

union, we were merely refusing to get tangled up on a technical point of a company check admitting and sending money back.

Now, this is the truth and this is the way counsel advised me. We did not deny the men. We were willing to cut the money, do anything they wanted to, but the money had to be sent to the union by them, not us, because we were involved in NLRB proceedings.

* * * * * * * * * *

2883 Q. Didn't your company sign and enter into a settlement agreement with the NLRB, Mr. Callis, where you were charged with having fostered and assisted this union, this Tennessee Miners Union?

A. Upon advice of counsel to meet the issue at the time, yes.

Q. And this was going on in December of 1962, wasn't it?

A. As to the exact time, I don't know.

Q. And in all of these NLRB proceedings you are talking about your company was working hand and glove with the Southern Labor Union, weren't you?

A. No, sir.

Q. Weren't you and the Southern Labor Union taking the same position on every issue that came before the board at that time?

A. Well, that could be, but it wasn't my company, it was Mr. Harwood, counsel, and at that time I think whatever period of time he served as president he had

2884 the power to do just that.

* * * * * * * * * *

By Mr. Rayson:

Q. In December of 1962 I believe you reported to your board of directors that you were getting a 17-ton-per-man production out of Grays Creek 11, weren't you?

A. Correct.

Q. Did you not also express to that board that you

2885 felt with the introduction of some new underground

equipment that you could increase your production to 3,000 tons per day?

A. Yes, sir.

Q. Now, your company is one of these substantial coal companies of this area, isn't it?

A. It was, it's not very substantial now.

Q. I am going to show you some papers, and I will ask you if you will identify this as the balance sheets of your company?

The Court: You are referring to Tennessee Consolidated?

Mr. Rayson: Tennessee Consolidated Coal Company.

A. Yes, sir, prepared by Price-Waterhouse.

Mr. Rayson: We desire to introduce this as an exhibit to Mr. Callis' testimony, Your Honor.

The Court: Exhibit No. 300.

(The balance sheet referred to above was marked D300 and received in evidence.)

Mr. Rayson: I wonder if we could have a few minutes?

The Court: All right. Take a 10-minute recess.

(Thereupon, a recess was had.)

By Mr. Rayson:

Q. Mr. Callis, do you recall that there was an arbitration case that came out of the discharge of two or three
2886 employees of Allen and Garcia?

A. Yes, sir, I recall that.

Q. Do you recall who those employees were?

A. Not by name.

Q. Do you recall that Waldon Shrum was one of them?

A. I believe he was.

Q. And do you recall that Mr. Shrum and the others were contending in this case that they were qualified, that they were competent to do the work?

A. I will say that Mr. Shrum was qualified, as I recall.

Q. Well, was Mr. Shrum contending that in his case?

Mr. Rowntree: We object to the form of the question

with respect to the specificity as to the type of equipment that was involved in that arbitration proceeding.

Mr. Rayson: Well, without regard to the specificity of the equipment, Your Honor, I was simply asking if Mr. Shrum in this arbitration case was not contending that he was qualified to do the work from which he had been discharged.

The Court: He may answer if he knows.

By Mr. Rayson:

Q. Was that Mr. Shrum's position?

A. I don't believe he was discharged for that reason, was he? I am not sure about this.

2887 Q. Do you recall that these men were directed by the umpire, that the company was directed by the umpire to return these men to work and that they had been wrongfully terminated?

A. I just don't recall exactly the specific issue over Mr. Shrum. I say the record there would speak for itself. I am not disagreeing.

Q. Well, do you recall that they were found to be qualified by the umpire and that they had been wrongfully terminated?

A. If they were, yes, I would say yes.

Q. And do you recall that this decision was delivered to your office in Tracy City?

A. Yes, I believe it was.

Q. And do you recall that your company did not abide by that decision?

A. If we didn't abide by it, it was by advice of counsel, whatever our actions were over that specific issue.

Q. Well, was this in December of 1962?

Mr. Rowntree: May I inquire of counsel's remarks or questions with respect to "your company" means Tennessee Consolidated or Allen and Garcia, may I ask counsel?

Mr. Rayson: May I ask counsel if counsel takes the position that Allen and Garcia and Tennessee Consolidated and

Grundy were legal entities obligating each other sep-
2888 arately but not jointly with respect to his inquiry?

Mr. Rowntree: Well, certainly Allen and Garcia was a separate entity, it was a Nashville engineering firm brought in to handle the coal operations on this property and as I understand it, was handling the labor situation at that time and I wanted the question to be more precise as to whether the Tennessee Consolidated had any position to take in regard to this matter or was it a position that Allen and Garcia had to take.

Mr. Rayson: It is our contention, Your Honor, with respect to that that this decision came out after Allen and Garcia withdrew and that the mining rights at Grays Creek 11 were assigned by Tennessee Consolidated to Grundy Mining Company. It is our understanding and we now ask the witness was not the arbitration award delivered to the offices of Tennessee Consolidated Coal Company and Grundy Mining Company at Tracy City in December of 1962?

A. If, in fact, it was delivered to the Tracy City office, that is the office of both Grundy and Tennessee Consolidated. I do recall the decision being delivered there. I think that it is important that the Court know that Allen and Garcia Company had the right to hire and fire and, therefore, it would seem to me that the decision was directed, although mailed to us or addressed to us, it was a decision involving

Allen and Garcia's decision to discharge the man,
2889 if that was the issue, but they had the right to hire and fire.

Q. Well, be that as it may, Mr. Callis, this did relate to the Grays Creek 11 mine, the employment at the Grays Creek 11 mine?

A. Yes, sir.

Q. It did relate to a period of time that Allen and Garcia were operating that mine as the operating managers for Tennessee Consolidated?

A. That is correct.

Q. And did you take the position that this award was not binding on your companies?

A. I don't recall now. We adopted the position Allen and Garcia took.

Q. Well, was there any award made on that while Allen and Garcia was there?

A. I don't recall, Mr. Rayson.

Q. In any event, you did not abide by the award?

A. I just don't remember. The facts would speak for themselves as to what they were.

* * * * * * * * * *

2903 HOUSTON BEAUMONT,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * * * * *

2908 By Mr. Rowntree:

Q. Now, Mr. Beaumont, did you participate in the

2909 Sewanee Coal Operators' Association meetings with the United Mine Workers in the fall and winter of 1962 and 1963?

A. I did individually as a member of the so-called Sewanee Coal Operators' negotiating team.

Q. How did you happen to be present in those meetings?

A. In the negotiating sessions?

Q. Yes, sir.

A. I was asked at one time by members of the association if I would serve on a committee if I was appointed. I said yes, I would serve on that individually but not as a representative of Tennessee Consolidated Coal Company or Grundy Mining Company.

Q. Are you a lawyer?

A. Yes, sir.

Q. You went to the University of Virginia, I believe, Law School?

A. Yes, sir.

Q. You have a license to practice law?

A. Yes, sir.

Q. Do you recall when the first session of these negotiations took place?

A. The first one was October the 30th, 1962.

Q. Will you state from your best recollection what significant thing happened at that session, if anything, and can you remember who was present on both sides?

2910 A. Generally, yes, sir. Present for the union in the first meeting, I believe, was Mr. William Turnblazer, Mr. J. W. Ridings, who was then president of District 19 of the United Mine Workers, Mr. Albert Pass, I understand was an official of District 19, also Mr. Turnblazer was an official, and in addition to them, I believe there were about 10 or 12 officials of various locals of the area and also I believe there was a Mr. Harvey Brown there, who at one time identified himself as a member of the International Policy Committee of the United Mine Workers.

Now, the various other individuals, if you ask me specifically was a certain person there, I might be able to identify them, but a number of them I did know by sight or by name but over the course of four meetings the attendance on the part of the union changed slightly from meeting to meeting.

For the Sewanee Coal Operators' Association, there was, I believe, five persons present in the first meeting, I believe Mr. Willis Flynn, Mr. Bill Ables, Mr. Howard Higgins, Mr. Howard Human, Mr. J. H. Graham and myself, there may have been someone else, I don't recall.

Q. Now, what took place, if you can remember, at that first meeting?

A. Well, not much took place, however, the initial or the beginning of the meeting was—

2911 Q. (Interposing) Let me ask you who is Mr. Peek?

A. Mr. C. C. Peek is the, as I understand, he is the conciliator or mediator for the United States Conciliation Service. Now, I may not have the names correct, but it is a government agency that provides the service for employer-employee bargaining sessions where they attempt to mediate and bring the parties together.

Q. And he was present at all of these meetings?

A. Yes, sir, all of the meetings took place in his office and he was present in all of the meetings.

Q. All right, sir. Now, let's go back to October 30th, what happened?

A. The meeting opened by the introduction of the two groups, Sewanee Coal Operators group was asked by what authority they were there to negotiate and in turn Mr. Ables, I believe, asked the union by what authority they were there to negotiate and they identified their group as the negotiating committee of the union. They offered no credentials.

Initially the meeting evolved around a purpose of this meeting. We are there to negotiate a new contract. We had conditions in the field that prohibited, made it economically impossible for the operators to sign the National Bituminous Wage Agreement and operate the coal mines profitably.

It happened that at about that time many of the UMW contracts with small mine operators had been can-
2912 celled so that was part of the background of these negotiations.

During the course of that first meeting, there was a demand for production figures from the operators on the number of employees, the location of the mines, and subsequently in the meeting a demand for wage rates of each of the mines. There was a question, the question arose as to the ability of the operators to pay the 40-cents Welfare.

During this meeting there was frequent reference to the Welfare Fund and pensions for the coal miners.

Now, in the course of the discussions regarding Welfare, it was brought out by Mr. Ables and myself and two or three others that the characteristics, geological characteristics of the Sewanee seam were so uncertain and in many cases so poor that a lot of the coal was susceptible to hand loading and hand mining only and not to mechanization and that the hand-loaded mines and most of the mechanized mines did not appear to have any chance of paying 40 cents a ton Welfare, regardless of what type of union contract was negotiated.

I think a good part of it, as I recall, a good part of that particular session was centered around this discussion of irregular, the irregularities of the Sewanee seam and the difficulty of adapting machinery to mines because in that meeting the union argued that the mechanization with more efficient mining practices and so on you could
2913 pay the full scale, you can pay 40 cents, and it meant that that had to be explained in terms of operator experience in the coal seam, the uncertainties being such that even those that might have had the money to buy the machinery wouldn't risk it, and I believe it was commonly understood that most of them did not have the money to buy machinery.

I believe at one course in the meeting it was a statement made that it seemed to be pretty generally accepted by all that perhaps—

Mr. Combs: (Interposing) I object to the characterization about being "accepted by all" and all of that. He can state the statement that was made but the reaction of these different people I object to.

The Court: Sustained.

A. The statement was made to the effect that possibly 90 per cent of the mines in the area were hand loaded and that automatically ruled them out of being able to pay 40

cents a ton. It was highly questionable that any of the mechanized mines could pay it.

At one stage, I can't recall whether it's in this meeting or the second meeting, the question of the mechanized mines' ability to pay came up and the mine of Mr. Virgil Thomas was used as an example.

Of course, in the discussions it came out that Mr. Virgil Thomas was 11,000 tons or $11,000 in arrear on his
2914 Welfare payments because using what we would consider, I mean employing what we would consider modern, mobile equipment, he had been unsuccessful in making enough money on his coal to pay the Welfare, and we, I believe it was a union representative that told us that he was behind $11,000 in his payments.

The discussion centered around what a mechanized mine could do and what chances there were for paying 40 cents, and the statement was made by Mr. William Turnblazer that if a mechanized mine such as Virgil Thomas' mine couldn't pay the 40 cents it was because of bad management.

This question of Welfare came up off and on repeatedly throughout the four sessions.

Q. When was the second session?

A. The second session was November 20, 1962.

Q. Did Mr. Peek make a suggestion?

Mr. Combs: When did you say that second session was?

The Witness: November the 20th, as I recall, 1962.

Mr. Combs: This first one?

The Witness: The first one was October 30th, 1962.

Mr. Combs: I am sorry.

The Witness: The second one was November 20th,
2915 1962.

Mr. Combs: All right.

By Mr. Rowntree:

Q. Did Mr. Peek make a suggestion at the end of that second meeting?

A. Yes, sir. Mr. Peek made the suggestion that the op-

erators make a proposal to the union on wages and Welfare or hospitalization coverage.

Q. Did the operator representatives meet and work up a proposal?

A. Yes, sir, they did, they worked up a proposal and a subsequent meeting was called, I believe, for December 18th, 1962, and during the course of that meeting the proposal was discussed, at least the initial portions of the proposal were discussed. The first two mine classifications and the amount of Welfare that the operators felt they in their good judgment, business judgment, could pay.

Q. How did that meeting break up, the December 18th meeting?

A. The December 18th meeting broke up without any conclusive results one way or the other. There was considerable bickering about the rates. The initial two classifications were explained at that meeting and considerable conversation and bickering about them. "What class of mine does that cover? What does it include?" And so forth.

Q. How were these classifications of mines broken 2916 down?

A. The highest classification covered the United Mine Workers' national contract scale for this area or district for mobile mining equipment, in other words, a fully mechanized mining operation using mobile mining equipment. That was Class A. The highest rate schedule, you might say, called for in this district under the national contract.

Class B was the next highest rank covering mechanized mines using non-mobile equipment.

Q. What is the distinction there between mobility and non-mobility?

A. The distinction being that, well, I will give you an example. A Joy loading machine, rubber-tired, self-propelled; a Jeffrey machine, loading machine, is a stationary unit, it can be moved but when it is in operation it has to

be anchored, it is stationary, it is not known as mobile where you can move it about quickly from location to location.

Q. Now, which is mobile and which is non-mobile?

A. The Joy is mobile and the Jeffrey would be the non-mobile.

Now, the Class B group was intended to cover those employing non-mobility equipment or a combination of mobility and non-mobility equipment.

Q. What about Class C?

A. We did not get into Class C mines, as I recall,
2917 in that particular meeting, but perhaps we did. I know it was covered in the final meeting to some extent, and the Class C group covered two groups of mines, one, or the first group of mines was a mine where the coal was undercut, machine cut by the operator and, as I recall, shot down by the operator, hand loaded into electrically powered equipment, such as battery-powered locomotive pulling mine cars on track, and then transporting it to the outside.

I believe, I am not too certain of this, but, as I recall, the Class C-2 mine was one where the coal miner drilled and shot the coal and it was then transported to the outside by electric-powered equipment, battery-powered equipment.

* * * * * * * * * *

2918 By Mr. Rowntree:

Q. Mr. Beaumont, we have been talking about these meetings between the Sewanee Coal Operators' Association and the United Mine Workers representatives on October 30, November 20th, and December 18th.

Was there another meeting after December 18th?

A. Yes, sir, there was a meeting on January 18th, 1963, also in Mr. Peek's office.

Q. Did the United Mine Workers representatives indicate whether or not they had considered the proposal made

by the operator group in the interim since the last meeting?

A. They indicated a consideration had been given to it and answered, in answer to a question—

Mr. Combs: (Interposing) If the Court please, in order that we can follow this, I wonder if counsel would mind, instead of saying "they" and indicating that, let's see who said what so we can follow it. I am sure he remembers or he has his notes there of who made the answers or statements.

By Mr. Rowntree:

Q. What happened at the meeting of January 18th,
2919 Mr. Beaumont, with respect to the proposals made at the last meeting by the operator group?

A. As I recall, Commissioner Peek asked the union group if they had considered the proposals made by the operators at the previous meeting.

Mr. Turnblazer spoke for the union group and said that they had considered them but they were inadequate in some of their ramifications and did not fit with the present situation, I believe is the phrase he used at one stage. He raised, in the course of the discussion that followed, he remarked that he thought the Mine Workers were entitled to an increase above the national scale, that they had not had an increase in nearly almost three years and that workers in other major industries had received increases during that time of various amounts, and he thought the Mine Workers were entitled to an increase of above those, above the rates called for in the national contract.

He also responded that he thought there ought to be an increase in the Welfare payments, that the men were entitled to a larger pension, they were entitled to a full pension of a hundred dollars and he thought an increase in the Welfare payments would be in order.

Q. At that time what was the pension under the United Mine Workers of America Welfare and Retirement?

A. Forty cents a ton.

2920 Q. I mean what was the amount of the monthly pension?

A. Oh, I beg your pardon. I am not sure of that, whether it was $75 or $85, but in that neighborhood.

Q. Was any agreement reached between the Sewanee Coal Operators' representatives and the United Mine Workers at that meeting?

A. No, sir, there was no agreement on any point of discussion.

Q. Mr. Beaumont, during these four meetings what expression was made by the representatives of the United Mine Workers with respect to their authority in these meetings?

A. There were two statements made and they were made in each of the meetings. In the initial meetings we questioned their authority to negotiate a new contract. We were told by Mr. Turnblazer that all issues were negotiable, that they had authority to negotiate a contract.

That type of conversation took place at the beginning of every session of all four sessions. We questioned the authority of that group to negotiate a new contract. There was never any evidence of specific authority given to us, whereas we had submitted a letter to the commissioner showing where the operators' committee had been authorized by the Operators' Association to negotiate on behalf of the operators.

2921 Q. Did the United Mine Workers' representatives say in which way that they had the authority to negotiate on the local level?

A. Mr. Turnblazer was the major spokesman for the group. As I recall, Mr. Turnblazer *or* identified the group there as the union negotiating committee and that they had authority to negotiate.

We raised the question as to local problems, such as the seam thickness, inability of the operator to pay full Welfare and so on and so forth.

Mr. Turnblazer stated that all issues are negotiable.

Q. At the local level?

A. At that level, the level at that table. He made it quite clear in his statement to us that all issues were negotiable at that level. On two occasions during the course of these meetings, upon questioning as to the authority, we questioned him repeatedly, he stated at one time that any contract negotiated would have to be approved by the national union, the other time he stated that any contract negotiated would have to be approved by the national or International Policy Committee, and I believe at that time that he took the national contract out of his pocket or off of the table and read some clause in there about the national policy committee having to handle all negotiations or approve all contracts that were negotiated.

2922 Q. What proposals did the representatives of the United Mine Workers make at these meetings?

A. They made —

Q. (Interposing) And who made it?

A. Sir?

Q. And who made them?

A. Mr. Turnblazer made the only proposals made, and they took this form:

He proposed, in fact, asked for, not a proposal, he asked for an increase of 10 cents a ton on wages set out in the national contract plus an addition dime Welfare payment, raising that to 50 cents a ton.

He said he would agree on a new contract, I am not quoting exactly, but the substance was clear enough, "We can agree on a new contract if we get the 10 cents a ton increase on top of the National Bituminous Wage Agreement rates and another 10 cents on top of the 40 cents, making 50-cents' Welfare payment."

The conversation at that stage, frankly, had got a little sticky because we had to again remind them that we come in there negotiating in good faith. We had made a proposal

to them and that that proposal had not been given apparently serious consideration, if any consideration at all.

We tried to get them to answer us on those proposals, any part of them, both the wage proposals and the
2923 Welfare proposal made one statement or in lieu of that a hospitalization and life insurance program was proposed.

The answer in each case was adamantly no. Mr. Turnblazer remarked that the men were entitled to this hundred-dollar pension and full medical benefits and that just wasn't enough for it. He said, "Forty cents is what it will take." He made that statement at one stage, and we asked him if that was the position of the committee, his committee, and he said, "The men are entitled to these pensions and full medical payments and that's what it will take to get it, is 40 cents."

Mr. Ables at that stage raised the question, I think the second time, raised the question of the ability of the operator, particularly of the hand-loaded mines, to pay the 40 cents and asked if any consideration would be given during the negotiations to the inability of an operator to pay the full 40 cents.

Mr. Turnblazer, as I recall, had two comments to make. One is they could make the payments if they would improve the efficiency and in conjunction with that statement he stated they could pay it if they all mechanized and I think that the reply made by Mr. Ables or myself at that stage was that in view of the fact that about 90 percent of the mines were hand loaded, that would automatically mean hand-loaded mines would go out of business because
2924 the operators did not have the resources, the ability or even the coal reserves to justify mechanization.

Mr. Turnblazer, or one of the others, I am not sure which representative, it may have been Mr. Pass, stated, "Well, they can mechanize, these companies can put up the money. They have done it before."

And he made the statement at one stage that Tennessee Consolidated Coal Company had financed mechanized operations. At that time no such, to my knowledge, no such thing had ever happened on Tennessee Consolidated properties. I could not speak for anybody else.

Q. What was the final proposal made by the representatives of the United Mine Workers?

A. The final proposal they made was that, "We will agree to signing the national contract. We won't consider anything else, but we will agree to sign the national contract if you will furnish some form of surety or guarantee that its terms and conditions will be complied with and that the Welfare payments will be made."

He suggested in that conjunction that large companies ought to set up some arrangement to make sure that the Welfare payments were collected and paid.

Q. Was that the point where the last meeting broke up?

A. Right at that point, sir. There was, I think,
2925 perhaps a little conversation after that stage, but Mr. Ables asked if Mr. Turnblazer meant that our proposals had been rejected and at that stage Mr. Turnblazer said yes, that they were inadequate.

* * * * * * * * * *

2931 CROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Beaumont, when you say "pickets" or "picket line," as you were referring to it at the intersection of 108, are you referring to a group of men carrying placards?

A. I don't recall that I saw any placards at the
2932 time, Mr. Rayson.

Q. Actually at that intersection at that time was the union hall for the Pocket local, wasn't it?

A. At one time there had been a building there that was called a union hall, I think it was burned, but I don't know when it was burned. It was, it may have been there at this time, it may not have been, I am not sure, frankly.

Q. Would your best recollection be that that burning occurred after that?

A. I could not say either way, because actually I don't know, Mr. Rayson, I just don't know.

Q. You don't know who burned that hall, do you?

A. No, I'm afraid I don't, sir.

Q. But when you say a "picket line," you are referring to a congregation of men standing either around that union hall or on the lot where that hall stood if it was then burned?

A. No, they were not on the lot, they were standing along the edge of the road and some of them were in the road. I don't recall seeing anyone at that time standing on the lot where that building that you identify as a union hall existed. The people that I observed were the ones that I saw at close range. I was driving this car at a low speed and trying to avoid bumping into a car in front of me or running over anybody that might step into my way.

2933 Q. All right, sir. Now, Mr. Beaumont, getting to these negotiations in which you participated in the fall of the year, you say that you were invited to assist with these negotiations?

A. I was asked. I don't remember exactly how it came about. I was asked if I would serve on such a committee.

Q. Do you remember who invited you to do that?

A. No, I don't, Mr. Rayson, I don't know whether it was Mr. Ables or a group of the operators or what. I honestly don't know.

Q. I take it you didn't have anything to do with setting up the Sewanee Coal Operators' Association?

A. No, sir, I did not.

Q. It came as a complete surprise to you, I take it?

A. No, sir, not as a complete surprise, but I had nothing to do with setting it up.

Q. You knew that it was being set up?

A. I heard that it was, yes, sir.

Q. Your company was a prime mover in setting it up, whether you were individually or not?

A. No, it was not, sir, to the best of my knowledge it wasn't and as an officer of the company I believe I would have known.

Q. You were an officer in the association, weren't
2934 you?

A. No, sir, I was not.

Q. Were you a director?

A. No, sir, I was not. If I was, they elected me without my knowledge and I never served in that capacity.

Q. All right, sir. Do you know who were the directors and officers?

A. It would be guesswork on my part. I know that Mr. Max Condra was president of it, Mr. Bill Ables was an official, I believe he is secretary and treasurer and counsel. I don't recall who was the vice-president. I am sure I know the individuals who probably served as directors, but to say which of them were elected on the board, I don't know, sir.

Q. Mr. Flynn and Mr. Higgins?

A. That I cannot verify.

Q. You say you don't know to the best of your recollection?

A. To the best of my recollection I do not know who those directors were.

Q. To the best of your recollection you weren't?

A. Well, if I was, it is not the best of my recollection. I know I wasn't unless I was just elected and never informed of it.

Q. But you did serve as spokesman along with Mr. Ables?

A. All of us were spokesmen in that meeting.

2935 Q. You and Mr. Ables were the chief—

A. (Interposing) Did most of the talking, yes, sir, because it just happened that Mr. Ables and I were prob-

ably the ones that had more experience in working together in meetings and things of that sort.

Q. Do you know when this association was disbanded?

A. I can only guess from that, sir, but it's my understanding it was disbanded sometime in 1964.

Q. Was that immediately before the Board had directed a hearing on a certain matter?

A. I cannot say for certain.

Q. You don't recall?

A. I was told that it was dissolved. I can't remember whether they said it was dissolved or the charter had been surrendered or just how it had been expressed to me, but I was given the definite impression that the association no longer existed.

Q. But this dissolution came after the NLRB election in which the United Mine Workers received a majority of the votes cast?

A. If my recollection is correct, that is right, yes, sir.

Q. In these negotiations who formulated this 4-step bid or 4-step-up proposal that the association made to the United Mine Workers?

2936 A. I think that Mr. Ables did most of that with the information he obtained from the various operators. I say that because I recall an operator, I don't remember who but someone showed me a letter in which Mr. Ables had requested of them that they furnish him with their wage rates.

Q. Mr. Beaumont, didn't you work with Mr. Ables on that?

A. At the tail end, not initially. He originated the thing. I got in on the tail end of it when he asked me as a member of the negotiating team to review the work that he had put together, which I did.

Q. You not only reviewed it but you mimeographed it and distributed it, didn't you?

A. I don't recall if I did or I didn't, Mr. Rayson, it is

possible but I just cannot flatly tell you we did or didn't because I don't remember. I don't operate the mimeograph machine. That's the only machine of its type in the immediate area. We do a lot of work for people when it needs to be done or they can't get it done. I honestly cannot tell you positively that we did or did not.

Q. It was done in your office?

A. Now, that I don't know, sir, is what I am telling you. I won't deny that it was, but I cannot tell you honestly that—

Q. (Interposing) Is that your best recollection?

2937 A. That it was or wasn't, I don't know.

* * * * * * * * * *

Q. Now, in this scale that you offered, you say you offered the UMW scale for certain mines?

A. As I understood the approach, they were talking about making a wage proposal they would start with.

Q. Do you have a copy of the letter that sets forth those rates, Mr. Beaumont?

A. Yes, sir, I do, sir.

* * * * * * * * * *

2938 Mr. Rayson: This is being introduced as a plaintiffs' exhibit?

Mr. Rowntree: Yes.

The Court: Exhibit 305. What is this exhibit?

Mr. Rayson: This is a letter dated January 25, 1963, addressed to Mr. Turnblazer from the Sewance Coal Operators' Association by W. M. Ables, Jr., for the negotiating committee, and we were discussing immediately before that a proposal which Mr. Beaumont, as I understood his direct testimony, stated was made to the union committee on December 18, 1962.

(The letter and attachment referred to above were marked P305 and received in evidence.)

By Mr. Rayson:

Testimony of Houston Beaumont—Cross

Q. Mr. Beaumont, I hand you this exhibit and I will ask you to refer to what is proposed there for Class A mines.

A. Mr. Rayson, may I interpose a question to you, please sir? It will be helpful for the record. I would like to supplement the testimony I made on the preparation of this document.

You were referring to this wage classification proposal this letter that is attached to it, I believe, was run on the mimeograph machine in our office, but I still do not know about this list of wage classifications.

Q. All right, sir. Would you refer to the proposal
2939 for the Class A mines?

A. Yes, sir.

Q. Now, is this the proposal you say was for the UMW scale, was that your language?

A. As I understood, it would be the wage rates for mechanized mines using mobility, all mobility mining equipment yes, sir.

Q. What mine in the vicinity corresponded to the Class A mine as you described it there?

A. What mine corresponded to this Class A?

Q. Yes, sir.

A. The only one in operation was the Grays Creek No. 11

Q. Yes. Now, was that proposal for the UMW scale was that for the hourly wage, hourly or daily wage only or did that include also a proposal to pay the royalty for Welfare at 40 cents per ton?

A. Well, sir, I will have to take a look at this to answer your question.

Q. Yes, sir.

A. It does contain, I believe on the last page, a proposal for Welfare.

Q. This proposal, I take it, was applicable to all of the classifications of mines?

A. I would assume so, sir.

2940 Q. All right. What was that proposal?

A. Shall I read it from the document?

Q. Yes.

A. "It is further proposed in connection with the mines that the Welfare shall be as follows:

"1. All mines were in production as based on tons per payroll man-day averaging one (1) ton per man-day through fourteen (14) tons eight (.08) cents per ton.

"2. All mines were in production as based on tons payroll man-day averaging fifteen (15) tons per man and up, twelve (12) cents per ton."

Q. Now, you say that this was the proposal relating to the Grays Creek No. 11 mine?

A. No, sir, I do not say that. I have never said it.

Q. Let me ask it this way. Was that the proposal with respect to a Class A mine?

A. That was a proposal that intended to cover the highest scale provided in the United Mine Workers' contract down to the lowest rate that prevailed in the field and that was my understanding from the first day the matter came up for discussion among the negotiating committee.

Q. Well, this was your package?

A. Not my package.

Q. Well, the association's package?

A. Maybe perhaps the association's package but any
2941 number of people participated in the preparation of gathering this information, it came from perhaps 25 or 30 different mines, I don't know, sir, I didn't compile the information, I don't know.

Q. Well, now, you are saying that the Class A mine is descriptive only of Grays Creek No. 11 in that area?

A. No, sir, I did not say that. You asked me the question if there was a mine that fitted that classification. I said Grays Creek No. 11 was the only one.

Q. You mean that was the only mine in the area that fitted that classification?

A. Is the only one that paid rates equal or comparable

to the rates that you have in this document as a Class A mine, but it is not, it does not deny the fact that any mobility equipment mine that might be opened at any future date would fall under the same classification.

Q. You are suggesting the possibility of other mines of that character being opened was discussed?

A. Yes, sir. I am suggesting that that is a possibility, because it was raised and I raised it myself when the matter was first brought to my attention in a draft form on this and on this type of proposal when I first saw the draft on it I raised the question myself.

Q. All right, sir. Now, be that as it may, at the time that proposal was made, the only mine that fitted
2942 that classification was Grays Creek No. 11, is that right?

A. Mr. Rayson, the way you phrased the question and expect an answer, yes. I do not choose to answer in terms of your phraseology. It happened that the rates paid at the No. 11 mine are the same or approximately the same as those listed as Class A in this mine.

Q. Well, let me see if I can't ask the question to you again, Mr. Beaumont, so that you might understand me. Was Grays Creek No. 11 the only mine that fitted that classification at the time, that is, the only mine in the field?

A. Mr. Rayson, it was the only mine in the area that paid wage rates comparable to those in Class A.

Q. Well, forget about the wage rates for a minute. Was that the only mine descriptive of the type of mine referred to under Class A?

A. Yes, sir, it was all mobility mining equipment.

Q. All right. And as to that mine and that type of mine you were offering this committee 12 cents a ton if it produced more than 14 tons a day?

A. Not I.

Q. The Sewanee Coal Operators' Association?

A. Sewanee Coal Operators' Association.

Q. And if it didn't produce at a certain level you were offering this committee eight cents a ton?

2943 A. Beg your pardon?

Q. The Sewanee Coal Operators' Association was offering this union committee eight cents a ton.

A. If I read it correctly, I believe there were two figures.

Q. Well, depending upon its productivity, it was eight or twelve cents per ton?

A. That's the way this proposal reads, yes, sir.

Q. All right. Now you took the position in this meeting, did you not, you have previously stated that you were not negotiating for Grundy?

A. Yes, sir, not only that but the Grundy Mining, when the roster of the members of the Sewanee Coal Operators' Association was presented in the first five minutes of the first meeting, neither company name was on that roster.

Q. But you were a member of that association?

A. A qualified member of that association.

Q. You paid your dues, didn't you?

A. Yes, we paid dues but the membership was accepted on a qualified basis and the tender of dues was put, when they were tendered it was put on a qualified basis.

Mr. Rayson, if you would like for me to go a little further on the point, I will be glad to.

Q. Were you seeking to negotiate with the United Mine Workers independently of this association?

2944 A. Mr. Rayson, I believe at this time the United Mine Workers had petitioned for an election of Grundy's No. 11 employees about the time this—

Q. (Interposing) Just answer my question.

A. Was I attempting to? No, sir, I wasn't.

Q. Was Grundy Mining Company seeking to negotiate with the United Mine Workers?

A. I was not any part to the negotiations with the United Mine Workers in connection with Grundy Mining Company employees, I cannot answer that.

Q. Is your answer that you do not know?

A. I do not know, sir.

Q. Were you the chief officer of the Tracy City offic
that time?

A. Mr. Callis is chief officer of the company, whe
is in Tracy City or in Nashville.

Q. When he isn't at Tracy City, who is in charge o
Tracy City office?

A. As a matter of course, I usually am, sir.

Q. But you don't have anything to do with the l
negotiations of the company?

A. I do as a matter of policy when the questions a
and I am consulted or we discuss the matters, the ma
is discussed among the officers of the company or at
board of directors' meetings.

2945 Q. But because of your experience somehow
did get tied in with the Sewanee Coal Opera
Association in labor negotiations?

A. At their invitation, yes, sir.

Q. But you say you weren't negotiating for your
company at that time?

A. That's correct, sir, I said that in the first two mi
of the meeting and have repeated it on various occa
throughout the full session. I never made a statemen
behalf of Grundy Mining Company or Tennessee Co
dated Coal Company during those discussions, althou
on many occasions was asked the same type of question
have asked, Mr. Rayson.

Q. So getting back to your proposal or the associat
proposal of December 18th, insofar as the proposal for
A mines was concerned, you were making a proposa
some mine that had no revelancy to the association?

A. I think I explained a few moments ago that it
intended in that proposal that they cover the highest
provided under the national wage agreement down t
lowest rates that prevailed in the field.

Q. Now, you have stated that in submitting a bid on December 7th, 1961, or in submitting a bid which was opened on that day, that you sought to come under or come at a price below a certain bid of the West Kentucky Coal

2946 Company?

A. Yes, sir, I stated that.

Q. Did you give consideration to any other potential bidders?

A. Yes, sir, I looked at the bid tabulations, I think, for two or three previous bid openings, but I figured the key one was that one because of the consistency of its bid figures, they consecutively bid $3.290, $3.290, and I did my own speculating that I had to bid against the optional tonnage.

Q. That was the option from West Kentucky Coal Company?

A. For an additional million tons of coal.

Q. This was the option that the TVA had secured from that company?

A. Yes, sir, that I had previously referred to in my testimony.

Q. Was that bid to the Widows Creek Steam Plant or was it just the system?

A. It was evaluated by Widows Creek Steam Plant and was among the lowest cost coal that could be delivered to the Widows Creek Steam Plant, therefore, I had to—

Q. (Interposing) Do you know if it was evaluated at the time of your bid of December 7th, 1961?

A. Beg your pardon?

Q. Do you know it was evaluated by TVA at the

2947 time of your bid of December 7th, 1961?

A. If I recall, it was evaluated at the time it was bid by TVA.

Q. Did you seek to get below all of the recent bids?

A. No, sir, that was the largest single block of coal that I anticipated would be moving in there, and I made limited investigation of TVA's coal potential coal needs at Widows

Creek Steam Plant, and I figured that that would be the dividing line if we wanted business for our company, I would have to bid below that in order to get in the group where it could be gotten.

Q. Of course, you were aware that companies such as Peabody Coal Company bid below your bid price the preceding time?

A. Yes, sir, I am aware of that. I also watched very carefully all the coal that had moved to Widows Creek on the L&N under the Section 22 rates as they were then established.

Q. This was your job?

A. Part of it, yes, sir.

Q. Was attending to the sales and the competition as affected your company?

A. That was part of it, yes, sir.

Q. Mr. Beaumont, you referred to West Kentucky Coal Company. Actually you didn't even consider West
2948 Kentucky Coal as a serious bidder prior to 1960, serious competitor prior to 1960, did you?

A. Prior to 1960?

Q. Yes.

A. I can't recall that I did or didn't, because I didn't have the responsibility for bidding, the prime responsibility for bidding, preparing company's bids for TVA or any other market until June of 1961.

Q. Well, of course —

A. (Interposing) At which time I —

Q. (Interposing) Whether you prepared the bids or not you were knowledgeable about the bids and you were knowledgeable of the affairs of TVA then, weren't you?

A. I was knowledgeable to a certain extent.

Q. But you say you didn't remember whether you considered them as serious competitor or not?

A. Mr. Rayson, we considered all bids. We keep, wherever possible, a full tabulation of all bids from any area

that can be evaluated at Widows Creek Steam Plant and have done it for years, it's a practice before I came with the company and we looked at every single bid and compared what it had bid on previous occasions and what we anticipated it would do again on the next opening.

Q. Of course you did. This was also a part of your
2949 job, wasn't it?

A. Right.

Q. But some of the people that were bidding to the system were serious competitors of yours at Widows Creek and some weren't, isn't that right?

A. That as a general statement is probably correct.

Q. And my question to you is that you did not consider West Kentucky Coal Company a serious competitor prior to 1960, did you?

A. I will have to answer your question this way because there is a relative question of price, that depends on what price you plan to market your coal at. The West Kentucky Coal Company bid coal at 23 cents a million at Widows Creek Steam Plant and we knew to be competitive we had to bid on 23 cents a million for that coal, that meant that West Kentucky was a competitor.

Q. Let me ask you, Mr. Beaumont, if you recall your testimony in Nashville on November 22nd, 1963?

A. Yes, sir, I do generally, I do, I remember making—

Q. (Interposing) Let me read it to you and I will see if you recall it. Now, I am reading from your deposition at page 134.

"Now, when had this shipment of coal from that field," referring to the West Kentucky field, "started to the Widows Creek market?

"Answer. I am not sure that I know.

2950 "Question. You don't know approximately when it started?

"Answer. It would be a speculated guess and I would rather not make one.

"Question. Was it being shipped to Widows Creek when you first came to work for these companies?

"Answer. I believe there had been some barge coal shipped to Widows Creek at that time in 1956, but as to say the exact date when rail shipments out of West Kentucky began at Widows Creek, I couldn't say. I would have to speculate that it began right after the Section 22 freight rate was established effective in October 1, 1960."

Skipping a question or two.

"Question. Were they competitors of yours prior to that time?

"Answer. I didn't consider them any serious competitor.

"Question. You did not consider them serious competitors?

"Answer. As of 1956 that you said, the earliest date.

"Question. In other words, you didn't consider them in 1956 serious competitors, is that right?

"Answer. No, sir."

Do you remember saying that?

2951 A. I think I do since you read it, Mr. Rayson.

Q. I take it that that was truthful then and it is your opinion now?

A. Well, there has been nearly two years since that time, since that deposition was given. Speaking in the same vein that I spoke in that deposition, I would say that the answer today is the same.

Q. Did you also say this:

"Question. When did you start considering them a serious competitor?

"Answer. 1960.

"Question. 1960. And what event in 1960 caused you to consider them serious competitors?

"Answer. The first thing that prompted me to consider that as a very dangerous competitive area was the bid submitted by West Kentucky, as I recall, in either January

or February of 1960 at $2.09, between that date and the date that the Section 22 freight rate came into being there."

Do you recall that?

A. I believe generally, yes, sir, I recall making that statement.

Q. And, of course, it was the freight rate that made you consider them as serious competitors, wasn't it?

A. No, sir, it was a combination of circumstances
2952 because progress was being made in both fields, both in terms of mechanization, efficiency, higher productivity, tons per man-day, there were a lot of factors that affected our competition.

Q. But up to that time it really didn't make any difference as far as you were concerned?

A. Well, if I recall, and you might remember, Mr. Rayson, that at that time it was not my prime responsibility to know market conditions, that was Mr. Callis'. I consulted with him and other officials of the company in the preparation of bids, however, I did not do the market research at that time. If I made such a statement, it was my independent opinion that could have been defective, also, as I recall, at one stage in 1956 the West Kentucky freight rate to Widows Creek was somewhere around $2.50 a ton, the combination barge-rail rate structure was somewhere in the neighborhood of $2.70 a ton, but keep in mind, too, Mr. Rayson, that during this period you are referring to the market price of coal dropped drastically and as it dropped this umbrella that I referred to or this feeling I referred to earlier was barely over our heads and we had to drop with it.

Q. Do you recall what the average price of coal was at Widows Creek in 1959?

A. No, sir, I don't.

Q. You say it dropped from 1959 to 1960?

2953 A. I am going in terms of the bid that we submitted May, 1957, that in the light of what prices we

were able to get the last time we bid at TVA. We submitted in between numerous bids in which we got no business.

* * * * * * * * * *

2960 WILLIAM B. ALLISON,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * * * * *

2988 Q. Do you have a sheet there on the average hourly wages of employees of Walnut Coal Company No. 12 at Grays Creek, the Howard Higgins mine?

A. Yes, sir. I have prepared here a sheet that starts in January 1st, 1965, through the pay period ending July 3rd of '65 in order to get in six months, showing the total man-hours worked, the gross wages paid, and from that the average rate per hour. This includes all productive employees exclusive of the superintendent, who is Howard Higgins, and he is omitted from it.

Q. Does this include both car-loading ratemen as well as shift men paid by the shift?

A. Yes, it does, it includes all productive employees, day or productive rate.

Q. What is the shift rate in that mine?

2989 A. It is $2.515 an hour, and I think they work 8½ hours, the shift men do, and they get a half hour, time and a half on that.

Q. What is the car rate or the ton rate?

A. The per ton rate is $1.50 per ton and the car is two-and-a-half tons and they are paid $3.75 a car, this is rubber-tired.

Q. Is that car rate called an incentive rate?

A. Yes, it is.

Q. Did you compute this sheet?

A. Yes, sir.

Q. What records did you compute it from?

A. Took it from the payroll records.

Q. Of this Walnut Coal Company?

A. Of the Walnut Coal Company, yes.

* * * * * * * * * *

2998 Q. Mr. Allison, what do these figures reflect?

A. They reflect the average ton per man on the productive payroll of the mechanized mine.

Q. Do they include—

A. (Interposing) For instance, if you have 50 men and you produce 500 tons, you automatically have 10 tons per man.

Q. This includes the productive personnel at the Coal Valley and later at Grays Creek No. 11 mines?

A. That is correct, sir.

Q. Does it include any non-productive personnel?

A. No, sir, it doesn't.

Q. Does it include overhead personnel?

A. No, Tracy City or none of that is touched in it, just those people—it does include a supplyman, one supplyman, electrician, and so forth.

Q. All right. Will you read those off by months?

Mr. Combs: May I ask one question of counsel?

2999 Does this include outside men, are they classified as productive men?

The Witness: This includes the outside productive man, for instance, the man on the belt line, or something like that, even though he is an outside man, he is included in it. I have face productive and overall productivity, but I was going to read overall productivity. I can read both, if you want it.

By Mr. Rowntree:

Q. We just wanted the overall productivity.

A. Which includes your face, your outside man, too, as long as they are in a productive job.

Mr. Combs: May I ask this one question of counsel?

Mr. Rowntree: Yes.

Mr. Combs: The Bureau of Mines and the Bureau of

Labor Statistics in classifying mining, they have a classification for what they call a productivity employee. Now, that generally includes the underground miners plus the outside miners who are actually engaged in the production of coal.

Now, would you say this includes their classification?

The Witness: This includes your tipple.

Mr. Combs: Would you say your definition would be something similar to that of the Bureau of Mines
3000 and the Bureau of Labor Statistics?

The Witness: What we are trying to approach is exactly that definition.

Mr. Combs: Would you say when we talk about productivity, if we made reference to that one, why, we would be correct?

The Witness: You would be correct, yes, sir.

Mr. Combs: Thank you.

A. November 30, Coal Valley mine, had an overall average tons per payroll man of —

The Court: (Interposing) What year now?

The Witness: 1961.

By Mr. Rowntree:

Q. This is a monthly average?

A. I was going to read the monthly average, we have got it daily and monthly, day and month to date, but I was going to read monthly average for each month.

Q. All right.

A. Because the other would be cumbersome. November monthly average was 6.25 tons.

Q. One moment. Go ahead.

A. November was 6.25 tons. Let me get the December 31st report.

December average was 8.94 tons. I have them scribbled out here but I would like to double check them as
3001 I go.

January is 9.44 tons.

February is 9.48 tons.

March is 9.52 tons.

Now, I have an average for the first quarter of 1962, January, February and March, mean average of 9.48.

April was an average of 11.67 tons.

May was an average of 7.75 tons.

June, June is an average of 7.84 tons, and I don't believe I have a quarterly average on that.

July, July you will have to omit, because that was a transition period between the Coal Valley and the Grays Creek mines where it didn't produce enough coal to justify even classifying it.

August we got into production at Grays Creek. In August we did not carry that figure because it would have been excessive for August but we got a good deal of tonnage but we didn't consider it a key figure to work with then.

By September we were in good enough production that it was a key figure, we got 7.76 tons.

The month of October we got 12.10 tons.

The month of November, November and December we achieved the highest we have achieved in any mine, which we achied 16.77 tons.

Q. In November?

3002 A. November. December actually achieved 19.94 tons.

* * * * * * * * * * *

CROSS EXAMINATION

By Mr. Rayson:

3003 Q. Mr. Allison, did you have anything to do with the negotiations with the United Mine Workers in the fall of 1962?

A. None whatsoever.

Q. You did or were you aware that they were going on as an officer of the company in the office at Tracy City?

A. Yes, I was aware that they were going on.

Q. Your end of it, I take it, isn't the bookkeeping and financial end of the company's affairs?

A. Primarily the financial end, yes, except in a small company you will do other things, Ed.

Q. Yes. Do you work with Price-Waterhouse in the preparation of the annual reports?

A. They do an annual audit.

Q. They do?

A. Yes.

Q. Well, do they work with you in connection with this annual audit?

A. Yes, they do.

Q. And do others in the company?

A. Under my direction they work.

Q. Do they also work with Mr. Callis and Mr. Beaumont concerning matters that they would be interested in?

A. The only thing that they do with Mr. Callis and Mr. Beaumont is in connection with a contract, something
3004 like that that might leave a legal contingent liability.

Q. Litigation and other odds and ends that would take a footnote to the statement?

A. That you would footnote to the statement, that is primarily what they would do with them.

Q. Do you recall whether or not your company made or lost money in 1962?

A. They made some money.

Q. They made money?

A. Um-hmm, I believe, '62, now, I am going from memory.

Q. Made money. You made, as a matter of fact, about $10,000?

A. Big fortune.

Q. Well, of course, you had some rather extraordinary expenses in 1962, didn't you?

A. Yes, we did.

Q. Among those expenses, of course, would be the re-

moval of your major mine from one place to another, wasn't it?

A. That would be one, yes, sir.

Q. Can you tell us or can you recall how much that cost?

A. In labor I would say it amounted to around, I am going from memory, around $40,000, contracts moving the machinery and so forth, most all of that was capitalized. If I may say why a great deal of that was capitalized, we had a loss carry forward. We had the option to capitalize anything that was borderline to capitalize, no point in losing a lost carry forward, so anything we could capitalize we did.

3005

Q. In any event, however you handled that fact, you did come up with a profit in 1962?

A. Yes, sir.

Q. Even after these interruptions all occurred by reason of that changeover from one mine to another?

A. Yes, sir. I do not remember what extraordinary we may have had during that year.

Q. Well, your income consists principally of your profit on the coal you purchased from the truck mines and your sales of coal from Grays Creek?

A. Yes, sir. What does it show that year on gain on the sale of assets? My memory doesn't serve me in any year, we may have sold equipment and that will show the sale.

Q. It shows none.

A. None.

Q. I want to read a paragraph from footnote 2 of the annual statement, and I will ask you if you will recall this footnote. "The Sewanee Coal Operators' Association, Inc., which Grundy Mining Company, Inc., is a member, has handled all labor negotiations with the United Mine Workers of America since October 24, 1962, although it is impossible to predict the outcome of current negotiations, the company is hopeful that the Sewanee Coal

3006

Operators' Association will be able to achieve a stable labor condition in the coalfields."

Do you recall that?

A. No, Ed, I really don't recall that note. If I had, I think they would have been an error on that point.

Mr. Rayson: Would counsel stipulate that paragraph does appear in the statement prepared by Price Waterhouse?

Mr. Rowntree: It does.

* * * * * * * * * * *

3008 Q. Now, Mr. Allison, I want to turn to your Exhibit P307, that is your exhibit which you prepared on Walnut Coal Company, Incorporated?

A. Um-hmm.

Q. Incidentally, do you also maintain the books for Mr. Flynn?

A. No.

Q. You don't keep his records?

A. No. And the last I understood a Mrs. Helen Funderburk in Whitwell maintained his records.

Q. On his present company in Grays Creek?

A. Um-hmm.

Q. Does Mr. Flynn and Mr. Higgins have comparable mines now in Grays Creek?

A. I would say that right now Walnut No. 12, which is operated by Mr. Higgins, I don't want to step on either one of their toes, but I think it is a better mine.

Q. These, however, are the two better truck mines on your property?

3009 A. They are comparable in this situation, Mr. Rayson, we would say they both are using rubber-tired equipment for hand loading.

Q. And they are averaging around that?

A. That would separate them in another category from the rail mines.

Q. They are both averaging around 18 to 20 tons per man-day?

A. I can't be sure what Mr. Flynn is averaging, but his production by the week is very close to Walnut No. 12, however, I do not know the exact number of employees he has.

Q. All right, sir. Now, in your Exhibit 317, I notice an item for royalty as one of your indirect production expenses, a royalty in the amount of 22,000 or, rather, $29,330.40 for the period January 1, 1964, through August 31, 1965?

A. That's right.

Q. Now, what is that item, sir?

A. That is what Tennessee Consolidated charged per ton as royalty on the coal lease.

Q. Now, is it Tennessee Consolidated or Grundy that has the ownership?

A. Tennessee Consolidated owns the mineral.

Q. Does Tennessee Consolidated or Grundy have this 51 per cent in Walnut?

3010 A. Tennessee Consolidated.

Q. So this item is the royalty paid to that company, Tennessee Consolidated?

A. That is correct.

Q. And that is one of the expenses that you show on the operation of this corporation?

A. That is correct.

Q. I also note that you have an item here for insurance expense?

A. Yes.

Q. Could you tell us what that is?

A. Well, that is a combination of all insurance. What I think you are driving at is the Blue Cross in there.

Q. Is that in there?

A. It's in there, too, yes, on that mine it will probably run about 2 cents a ton.

Q. I think you estimated on an average basis your Blue

Cross and your medical benefits that you give these em
ployees runs 7 to 8 cents a ton, is that right?

A. It runs anywhere on the average mines in Gray
Creek, some, of course, you have a group of mines, some ar
more and better coal than others, some more productiv
than others, it varies from 4 to 8 cents but when you figur
the productivity at Walnut, I doubt if it would run mor
than 2.

Q. In any event, it includes the medical benefi
3011 paid to employees?

A. That is correct.

Q. Do you have any office, do you hold any office in th
Walnut Coal Company?

A. Yes, sir, treasurer. I draw no money.

Q. Are you also an officer in Grundy?

A. Yes, sir. I draw no money from Grundy.

Q. You just donate your services for the pleasure o
your services to those companies. I take it you do draw
salary from Tennessee Consolidated?

A. I do draw a salary from Tennessee Consolidate
I eventually might be in position to draw one from Walnu
however, Walnut has never been charged with any of i
office expense, billing, interest, or anything else, and tha
will be eventually billed to Walnut, but I had enough payin
what it has on its equipment, we have not billed for the bil
ing and general administrative expenses that we have ha
dled in the Tracy City office for it.

Q. Mr. Higgins works for this company as an employe

A. Yes, he does.

Q. Is he paid a salary?

A. He's paid a salary, yes.

Q. What does he do for this company?

A. He is what you might say a working superintende

Q. Were you familiar with what work Mr. Higgi
3012 did at his mine in the Pocket?

A. No, I didn't know Mr. Higgins when he w

over in the Pocket, I just knew him when I met him and never did go to the Pocket mine.

Q. Were you familiar with the work that the Pocket operators did generally?

A. Yes.

Q. Is Mr. Higgins doing about the same thing now that those operators were doing?

A. He is with one exception, he has picked up enough employees there and he has enough that he is having to become a little more of a supervisor and less ability to pitch in and work.

Q. In any event, he is supervising this mine as the operators in the Pocket were supervising theirs?

A. Right. Now, he works quite a bit in there himself but he has to divide his time between the two.

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3016 WILLIAM VON MEDING,
DIRECT EXAMINATION

(Mr. Rowntree read the questions and Mr. Walker the answers.)

"Q. What is your name, sir?

"A. William von Meding.

"Q. And where do you live, Mr. von Meding?

"A. My legal residence at the moment is in Jupiter, Florida.

* * * * * * * * * *

"Q. How long have you been engaged in any phase of the bituminous coal industry?

"A. Since 1916.

"Q. And what was your engagement at that time?

"A. I came with Allen and Garcia Company on a loan from an engineering company that I had been with
3017 since 1912 to work on the buildings for the Columbus Mining Company at Hazard, Kentucky. They were

just opening there then and I did all of that original work down there at Hazard I.

"As a result, because of being loaned over there, Mr. Allen, who was head of the company at the time, asked me to stay with them, which I did, and that lasted until my retirement just a year ago—a total of 48 years.

"Q. Is Allen and Garcia a corporation?

"A. They are.

"Q. Did you serve as president of that corporation for a time?

"A. From 1922 until my retirement.

"Q. Was that '22 or—

"A. (Interposing) 1942, a period of 22 years.

"Q. What is your present occupation?

"A. None, retired.

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3027 "Q. Mr. Fitzgerald, I believe, you placed in charge of the operations for Tennessee Consolidated Coal Company in Tennessee?

"A. That is right.

3028 "Q. Was he given the primary responsibility down there in that operation?

"A. He was. By that time he was the vice-president of our corporation and was fully capable of doing whatever was necessary.

"Q. Did you, yourself, make trips to Tennessee?

"A. Occasionally.

"Q. Did Mr. Fitzgerald sign a UMW National Bituminous Coal Wage Agreement for that job?

"A. I think he was the one that signed it, yes.

"Q. As an officer of the corporation?

"A. Allen and Garcia, yes.

"Q. Was Allen and Garcia able to operate successfully the mines in the Sewanee seam down there under the National Bituminous Coal Wage Agreement?

"A. No.

"Q. Your answer was 'no'?

"A. Yes, judging that by results.

"Q. What were the results after you signed the National Bituminous Coal Wage Agreement and entered into operations in the Sewanee seam? What were the results?

"A. Well, the first thing they asked us to do was to continue the operation of what was known as the Coal Valley mine. We ran into two differences. One, the inability apparently of the local miners to become versatile
3029 with the new equipment that we saw fit to introduce, and then because of the nature of the coal seam down there, very unfortunately the mine was old and there was very little unmined area that we could choose from, and our continued operation was more or less directed by what was left.

"And what was left, we ran into rock conditions which finally caused us to abandon the operation as uneconomical. We were taking up more rock than we were coal and there was no way of proving the extent of this coal or this rock deposit.

"Unfortunately in mining in mountain areas like that even drill holes can fool you because it is in pockets, and we have had the unfortunate experience when drilling a trial of hitting a pocket of coal and you would think you have got coal and when you got there you find it is very spotty. I had this experience very many years ago in Iowa.

"So that in that type of mining deposit, expensive drilling is a waste of money and it is purely a gamble of what you hit day by day. That is true in many mountain areas.

"Q. Is it true that you would run into good conditions and bad conditions?

"A. That is right. And every time we ran into a good condition we thought, 'Oh, we're over the hill now,' and I would sit on the telephone and wait until Fitzgerald called me to see what transpired day by day. Sometimes
3030 good, sometimes bad, but ultimately we ran into solid

rock with no other place to go. There was nothing left.

"Mr. Combs: Am I to understand this was, what mine was this that you are talking about?

"A. The Coal Valley mine, which they had operated for a number of years on — first on a hand-loading basis and then on a very modified mechanized basis and then abandoned the operation of it.

"Q. And then after Coal Valley was closed you moved over to Grays Creek, I believe?

"A. That is right.

* * * * * * * * * *

3038 "Q. Mr. von Meding, did you ever attend any meeting in Washington concerning this situation you encountered down there in southeast Tennessee?

"A. Only one, very early in it.

"Q. And where was the meeting held?

"A. In Mr. Kennedy's office of the United Mine Workers' offices. He was at that time president.

"Q. Do you recall who was present? Was Mr. Lewis or Mr. Boyle present?

"A. Mr. John Lewis was there, Mr. Kennedy, Mr. Boyle, Mr. Yablonski, I think, and a number of local union members from the president down. I think there were approximately 33 or 34 of them.

"Q. Was Mr. Shrum there?

"A. Yes.

3039 "Q. Was the Joy Machine representative there?

"A. As I remember, yes.

"Mr. Combs: May I ask whether or not the witness knows his name? I have heard reference to that a couple of times and I never got the man's name.

"A. You have got a record of it there somewhere. It was the first Joy man that they sent us when we bought the equipment. I think there is a record somewhere of who he is.

"Mr. Combs: We have notes, but we don't have his name.

"Mr. Rowntree: We eventually ended up with two of them and I think they are both in Mr. Fitzgerald's deposition.

"A. I was not too concerned with it in my position, the details of a minor nature. That was what Fitzgerald was there for. It is in there, the names of both of them, but only the first one was in that meeting.

"Q. Can you recall what took place at that meeting?

"Mr. Rayson: Excuse me. I think he has identified the representatives of the union who were present but not any of the other representatives. I wonder if he might do that at this place in the deposition.

"A. Well, there was myself and Fitzgerald, Houston Beaumont, who was an officer of the Tennessee Consol. It seems to me there was one other. Maybe it was the
3040 Joy man.

"Mr. Rayson: Was Mr. Poore, I think, present?

"A. I think he was the fourth one. There were four of us, as I recall, and a room full of UMWs.

"Q. And what took place?

"A. Well, the meeting, as I recall, was the result of differences that we had run into in the operation of the property from a labor angle, and I wanted to get at the bottom of what was what.

"So Mr. John Lewis consented to meet with us in Washington, which we did, and at that meeting, the actual result of it was, according to my interpretation of what happened, was Mr. John Lewis told the entire assembled people that the Allen and Garcia Company had lived up religiously to the contract, and the local down there had not, and they better get back home and clean house, and get in line.

"Mr. John Lewis was very emphatic in speaking to Mr. Shrum that he knew better than to have tolerated the vio-

lations that we alleged had taken place, and to which they made no denial.

"Mr. Combs: Did there come a time when Mr. Shrum left the meeting as the result of Mr. Lewis' statement to him?

"A. Yes. I had known Mr. Lewis for many, many years, but I have never seen him fly off the way he did toward Mr. Shrum. What reason he had for it, I do not know to this day, but he thoroughly berated him for his con-
3041 duct in running that local in connection with our contract, to such a point that Mr. Shrum arose and stomped out of the room and left. That was the last that meeting saw of Mr. Shrum.

"Later, I found him on the same plane with me going back to the mine, but I had no conversation with him. In fact, I never had any conversation personally with Mr. Shrum.

"Q. What was the effect of that meeting now, Mr. von Meding?

"A. Well, the effect of the meeting was that we were convinced that everything had been straightened out, that the local had been instructed to get in line with the contract provisions and for about three weeks everything was lovely. We went along, and it was too good to be true, then finally it began to start all over again.

"Q. Had there been commissions down there before, sent down by the International Union?

"A. Yes, yes. I think this gentleman Yablonski was the head of one of them."

* * * * * * * * * *

3045 "Q. And it became necessary to call this meeting in Washington after those commissions were sent down?

"A. Yes.

"Q. After all—

"A. I'll say Mr. Yablonski was very blunt and fair in

his report of what he found, he wasn't pulling any punches.

"Q. Did anything come of that?

"A. Well, I think it had a lot to do with Mr. Lewis' conduct toward Mr. Shrum.

"Q. After all these meetings —

3046 "A. I got the impression that he substantiated our position.

"Q. To Mr. Lewis?

"A. Yes. That is my recollection of it. Certainly something prompted Mr. Lewis to do that. Do you keep a record of those meetings, I mean down in Washington?

"Mr. Combs: I just have some notes about the meeting. I know what you are talking about.

"A. I think you can bear out what I have said as to what transpired at that meeting.

"Mr. Combs: So far, I will.

"A. It is the first time that I had ever witnessed a berating of a local president.

"Q. This was a district president?

"A. No, Shrum was not a district president.

"Q. That is right.

"A. He was a local chairman and, of course, I was very much surprised.

"Q. Was the district, Mr. Ridings —

"A. I don't think he was there.

"Q. Was any district representative there, to your knowledge?

"A. I don't remember. I would think the record of the meeting would prove or disprove that. They must have a record of who was in that meeting.

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3047 CROSS EXAMINATION

3048 (Mr. Combs read the questions and Mr. Chambliss the answers.)

"Q. Mr. von Meding, we would like to ask you just a

few questions. You testified that you are on a retirement status from Allen and Garcia.

"A. That's right.

"Q. Do you receive any pension, any compensation from that company?

"A. Yes, according to the pension plans, which I instituted at the time I was there, not a great amount.

"Q. You testified that in connection with the Tennessee Consolidated, that you had a contract, an operating contract. Will you please explain a little more fully what was the nature of that contract between Allen and Garcia and the Tennessee Consolidated people?

"A. May I ask counsel? Is that

"Mr. Rowntree: Well, Mr. Fitzgerald has introduced Exhibit 1. May I show him that?

"Mr. Combs: Yes."

Mr. Combs: And then Mr. Rowntree exhibited Exhibit 1 to Fitzgerald.

"A. Well, this is a letter from Stanlee Hampton to me confirming our verbal understanding, yes. This, incidentally, was written in Spears' office.

"Q. Is that an exhibit that you offered here?

3049 "A. Yes, that contains the entire story.

"Q. May I see it?

"A. Yes, surely. Fundamentally, after we had reached a production that we agreed upon was attainable, we were to be paid on a tonnage basis, which is our customary remuneration.

"However, under these conditions where Coal Valley had to be cleaned up first, and put back in operation, we had a lot of work to do with no coal production to begin with obviously. So we agreed upon a monthly retainer until the coal production reached a point where the monthly exceeded or I mean the tonnage figure exceeded the monthly figure. That never happened.

"Q. And that is what you depended on in making your

profit, was the production commission on production rather than the monthly minimum?

"A. Yes, because the monthly retainer was small, relatively small in comparison to what we could have earned had we reached the production figures we were talking about.

"Q. I believe you testified that the reason you didn't reach those production figures was because of the nature of the work done on the mine and the rock and the things that you ran into in that mine, is that correct?

"A. That is right. That is only true of the Coal Valley Mine.

3050 "Q. That is true of the Coal Valley Mine, however?

"A. Well, also we began to have labor troubles as far as getting competent men to operate the equipment we chose to put in, but we never got far enough along, as I remember, before we were forced to shut down because of the nature of the coal deposits.

"Q. In other words, as far as the Coal Valley Mine is concerned, the labor troubles had no bearing. If you had been able to get competent labor, you still would not have had the production, because of the difficulties that you ran into in the mine?

"A. I cannot agree with that because of the subsequent happenings at Grays Creek. Number 11 would have developed had Coal Valley had the physical necessities.

"Q. Well, let's get back to Coal Valley for a minute. Didn't you testify that you ran into practically solid rock in Coal Valley?

"A. In certain tries, it was not a uniform thing. Coal and rock are interspersed in most any form.

"Q. Well, was that the factor that caused you to abandon the Coal Valley Mine?

"A. I would say fundamentally, yes.

"Q. All right.

"A. However, cognizant of the fact that we were ap-

proaching a labor situation where we were really
3051 unable to get enough competent machine operators,
but the real test of that I think I can say, was fully demonstrated at Grays Creek.

"Q. All right. At Grays Creek what kind of investigation did you make prior to going into Grays Creek to determine the feasibility of that operation?

"A. We were given what geological information the company had. It had already been determined, I think, a long time ago that in some future date that would be an ideal spot to try.

"Q. Was that different from the Coal Valley Mine you were talking about a while ago as far as finding out what you were running into through drilling, is there a difference?

"A. Well, you can do two things, you can locate in a certain place and get as much information as you can, or you can take the area as a whole and from other operations, you can make certain geological deductions, correct or incorrect, that this is the best place to try.

"Q. And is that what you did at Grays Creek?

"A. We did, but we had no assurance that it would develop that way.

"Q. But you had the same type of contract to operate Grays Creek as you did —

"A. Oh, yes, we were still on the monthly retainer because of the lack of tonnage.

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"Q. That didn't depend on you filling the TVA
3053 contract did it?

"A. Well, Tennessee Consol would instruct us to attempt to mine so many tons of coal each month on this given schedule. It was all worked out.

"Q. Yes, but your contract relating to commission over and above the mine and not on what Tennessee Consolidated's mine made?

"A. That is right. Our only obligation was to carry out

our orders from the people who employed us, and that was to mine a given schedule of tonnage consistent with their sales.

"Q. And, as far as you were concerned, it made no difference to you insofar as your contract was concerned, what scale they paid or whether they operated under a union or who they sold their coal to, as far as your contract was concerned, it didn't depend on that?

"A. Yes, it did because part of our contractual relations with Tennessee Consolidated stated that we were to be the signers of the contract with the United Mine Workers.

"Q. Did you sign that contract?

"A. We did, and we lived up to it.

"Q. But you didn't pay the payroll, it wasn't up to you to pay the payroll?

"A. No. We were the manager but at Tennessee
3054 Consol's direction we executed the contract with you.

"Q. Primarily as the agent of Tennessee Consolidated?

"A. Yes, I would imagine. I don't know what the legal inference is. You see, we had no financial interest in this other than the earning of our fee, the same as a lawyer would, dentist or doctor.

"Q. Mr. von Meding, that is exactly the purpose of my questions. You have made the answer that I thought was true.

"A. That is true.

"Q. Now, you are talking about —

"A. Our contract remunerations were strictly as stated in that letter.

"Q. Right.

"A. And that is open and everybody can read it. Naturally, we wanted to earn as much money as we could. We are like everybody else, we are in business to make money. So it was to our interest to get that production to their sales ability as quickly as we could. That is only natural.

"Q. Perfectly natural. Now, you were talking about local labor troubles. What was the nature of those disputes? Just what are you talking about when you are talking about local labor troubles?

"A. The apparent lack of skilled labor among the Local. Remember that there were mostly older men who had
3055 been used first to pick and shovel, and then the more modest forms of mechanization. We tried, naturally, to get the lowest cost for our client. We had to establish our reputation as people desirous of being employed, so we chose the very latest equipment that was available. That is only naturaly, anybody would do that.

"And the Joy Company cooperated with us 100 per cent in furnishing instructors, and they stayed there much longer than any other job that they had ever been on, to my knowledge, in an attempt to go through the membership of that local and get sufficient men.

"Now, in order to meet any reasonable production schedule, we had to have two crews, two shifts a day. You can't afford to buy that machinery and just use it on one shift. Capital expenditures will run you out of house and home. So the minimum that we could economically foresee would be a 2-shift operation with two units. That was an engineering determination based on the production requirements that their sales department figured they would need.

"So we set out there then to get enough qualified men to make up those four crews; two for the day shift and two for the night shift. And we went through the entire personnel and failed. We got three tolerable crews and that was as far as we could go.

"The machinery was wrecked and mishandled and
3056 everything else by people who tried it, but simply didn't have the mechancial ability to run it. You put somebody out driving an automobile, you can get people who just can't drive an automobile, you just don't leave them.

"And we ran into those people who still insisted, however, that because they were members of that local they had to be employed. We had no place for them. We employed every last available local United Mine worker.

"Then, what is the logical step? You then would go outside and get them, and they were available. Qualified United Mine workers were available in large number in West Virginia, because at that time production in West Virginia was low. There were plenty of men out of work. Poore, Fitzgerald, Bradley, all those fellows came from West Virginia. They had a list of United Mine Workers that could have gone in there and just made wonderful crews, but we stuck to our resolution that we would stay with those three crews hoping that they would become as qualified as outside men.

"If I had had a free hand I would have employed men based on their competency in that new Grays Creek Mine regardless of their local affiliation.

"Q. Did you have an agreement of some kind with the District and the local union on giving *thse* people a trial?

"A. Definitely, it's all on record.

3057 "Q. And didn't some of those disputes arise out of the claim that some of them had not been given a fair chance to run the machinery?

"A. The result was that Mr. Fitzgerald wrote up a case history on every man that is available.

* * * * * * * * * *

3058 "Q. I would like to ask you a few questions about your experience in the other coal fields. Did you find any different coal fields in Wyoming and West Virginia, did you find any differences like you found in Tennessee with reference —

3059 "A. Never.

"Q. —to geological conditions?

"A. I thought you said, 'labor.' Yes, we had the same troubles.

"Q. You had marginal mining?

"A. Exactly.

"Q. And marginal coal seams?

"A. Exactly.

* * * * * * * * * *

"Q. So that Tennessee Consol, the seams are not all unique. You find comparable seams in other coal fields?

"A. You don't find, as I recall, there was not as much variation in the various seams as there are, for instance, in West Virginia. West Virginia has got very poor steam coal and some of the best metallurgical coal.

"Q. Is that true of Tennessee?

3060 "A. No. This Sewanee seam, while it is not too high in BTU relatively, it seems to have a use as a coking, for the adding to the coking mixture of the Alabama coals.

"Q. By-products?

"A. By-products.

"Q. So there is a very limited market for that coal for for metallurgical purposes and a local market for by-product coal, steam coal?

"A. I don't understand that 'steam market or local market.'

"Q. Well, is the Tennessee market, the steam market, comparable to the steam market in other coal producing states?

"A. No.

"Q. Why not?

"A. Because the area into which you can ship East Tennessee coal is very limited as compared to in other states.

"Q. What is their market, the Tennessee coal?

"A. Well, outside of the metallurgical coal, frankly, it is mostly TVA, or there are now a number of industries which have started up who require steam coal.

"Now, the proximity of those seams in Tennessee to

such customers gives them a market because of the very, very *los* freight rate. You can truck it over.

"Q. When you state 'gives them a market', it gives them a competitive advantage?

3061 "A. It is very limited in tonnage, however, you couldn't live, you couldn't operate a coal company on those few customers. You have got to have tonnage to run a coal mine and the big tonnage customer, outside of the metallurgical, is still TVA, and they have a natural advantage there because of their proximity.

"Q. Based on transportation costs?

"A. Yes.

"Q. Rather than the BTUs?

"A. Well; they figure that is taken into account. TVA and all these public utilities buy on the price per mill BTU. Now, whether that is the price of coal or price of transportation makes no difference. It is the sum of those two divided by the BTU content of the coal which determines the cost per mill BTU.

"Q. But would the Tennessee coal have an advantage in the TVA market because of the BTU content of its coal or not?

"A. Yes.

"Q. In what way?

"A. It is of higher quality than some of the coal that TVA buys from the outside.

"Q. All of it or some of it?

"A. No, just some of it. TVA buys wherever they can get coal at the lowest per mill, the BTU cost, they

3062 buy it on the BTU.

"Q. So that you just wouldn't say that the Tennessee coal has an advantage over their competitors in other places simply because of their high BTU?

"A. No, definitely not. Except for that one little isolated metallurgical use, their BTU content isn't necessarily the reason for choosing it. It is the fusion, the ability to make

coke. You can take the finest coal from the standpoint of BTU and it isn't worth a nickel to make coke out of. There is something wrong with its fusion.

"Q. Has your company had experience in mining low seams of coal in states other than Tennessee?

"A. Yes, yes.

"Q. Would you name some of the places that you have mined low seam coal?

"A. West Virginia mainly and Jellico, West Virginia in the Jellico field.

"Mr. Rowntree: They call that Eastern.

"A. Well, that is two entirely different districts, while they happen to be in the same state, geologically they might just as well be ten states away.

"Q. Did you mine that on a mechanized basis in West Virginia?

"A. Yes.

"Q. Did you mine it on a mechanized basis in Ten-
3063 nessee?

"A. No, because in those days the machinery available today wasn't there.

"Mr. Rowntree: You are talking about the Jellico seams?

"A. Jellico seams, the Jellico seams were back in the late '30s. But let me say I have seen very few places like that. We ran into some low seams, and then again very high ones.

"Q. Now, when you say 'very few places', you mean the different coal mining states?

"A. The different coal mining states. You will run into an occasional low mining seam, and whether you mine it or not it is usually determined by its proximity to the market.

"Q. And not necessarily the thickness of the seam?

"A. That is right. If you got a market next to the mine, even though your production cost is 50 cents higher than

a fellow further away, if his freight rate is more than 50 cents, you still have got him beat, haven't you?

"Q. And if the good Lord places a river close to a market?

"A. Fine.

"Q. And you happen to be fortunate enough to get coal next to that river, you have got an advantage over the other competitors?

3064 "A. Now we are involved in various phases of the operations of the Davidson Fuel and Coke Company, who sell to Cincinnati Gas and Electric. That entire coal area in which we operate wouldn't be worth a nickel if it wasn't for that river.

"If we had to ship that coal by rail to Cincinnati we would be completely out of the picture because the quality is such that they can higher grade coal for equal freight rates on the rails. We wouldn't be there, but we have such a low transportation cost from those mines where we dump right into the river right in back of the coal mine.

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3065 "Q. We would like to ask you a question about operating on seams in West Virginia. When did you do that operation?

"A. Over a period of many, many years up until very, very recently.

"Q. How did that tonnage compare with the Sewanee seam in Tennessee?

"A. I would say it was far more consistent. We ran into troubles, yes, but not this day-by-day trouble that we ran into in Tennessee.

"Q. You are talking about geological troubles?

"A. Yes. We would have to search but usually we had a larger body surrounded by rock and so forth, we didn't have these daily uncertainties that you run into down there.

"Q. Did you have that uncertainty daily in the Grays Creek Mine when you left that?

"A. In our experience, no, it was ideal when we were there.

"Q. Was it your prognosis that it would continue to be ideal?

3066 "A. That is the only thing we could think lacking evidence to the contrary.

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3068 RECROSS EXAMINATION

(Mr. Combs read the questions and Mr. Chambliss the answers.)

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3069 "Q. And didn't you make an agreement, your company now, Allen and Garcia, with the union that you would process any disputes that arose between the company and the men on whether or not they were qualified to do this work, didn't you make an agreement of that type in writing?

"A. Well, Fitzgerald may have. I don't remember any part of it that I had. I can only say from personal experience and contacts down there that I can truthfully say that we made every effort to live up to the agreement

3070 and use the local's men insofar as they were usable, competent.

"Q. And you had disputes over that, did you not?

"A. Yes, but then Fitzgerald wrote up a case history on each one.

"Q. You had disputes that resulted in the men refusing to work down there several times, did you not?

"A. No, the refusal to work down there was in the attempt to introduce competent men, United Mine Workers from other areas.

"Q. Was that the sole reason every time that they were out on work stoppage, was that the question of dispute?

"A. I cannot answer that from personal knowledge, but from my overall knowledge of it, I would say yes.

"Q. And if the records show otherwise, it is just because you are not familiar with the situation, is that right?

"A. That is right.

"Q. And you say you were not familiar with the efforts to settle those disputes and what steps were taken and all of that?

"A. Yes. But I know that I issued orders and I am sure Fitzgerald carried them out, to the best of my knowledge, that we were to live up to our agreement to utilize local men to the utter extent of their ability.

"Q. Mr. von Meding, didn't you have running
3071 conversations with Mr. Boyle with reference to two or three of those situations down there, and didn't you get into the dispute with Mr. Boyle on whether or not you had agreed to process these disputes under the contract? Didn't you call him from Florida a couple of times, and didn't you talk to him a couple of times from Chicago?

"A. Yes.

"Q. And was the nature of the dispute that you had not agreed to process—

"A. No, the nature of the dispute was that we could only fill three crews. We couldn't operate on three crews and that they were picketing us to prevent any outsiders from coming in there of the United Mine Workers. Now, in all other areas we were always privileged, when the men were not available locally, to find them elsewhere. That is common practice.

"Q. Now, let's get to your conversation with Mr. Boyle.

"A. Yes.

"Q. And that was just a short time before you terminated your contract down there?

"A. That's right.

"Q. Didn't you and he reach an impasse over whether or not you had agreed to process the disputes that those men had brought to Fitzgerald that they were com-
3072 petent to do that work, and that he hadn't given them

a fair trial and that they wanted it to go through arbitration and Fitzgerald had refused to do it, and Mr. Boyle had talked to you on the telephone, and you had exchanged wires to the effect that you would settle that under the dispute machinery, and then later on you refused to do it saying that that contract didn't cover the Grays Creek Mine? You say that didn't happen?

"A. No, that is not true.

"Q. What is true.

"A. Mr. Boyle, as I remember it, was calling for arbitration of things.

"Q. Right.

"A. That, in our opinion, were not subject to arbitration until the prior conditions stipulated in the contract were first complied with, and you will find that in my correspondence.

"Q. All right. Then you were taking the position, were you not, you were being the judge on whether they were arbitrable or not. You didn't want to leave it to the contract?

"A. The contract stated exactly the procedure. You follow Step 1, Step 2, Step 3, Step 4, and he was jumping to Step 4 without having been taken care of.

"Q. Now, isn't this true, and, Mr. von Meding, I want
3073 you to search your memory and tell me if this is correct: You called him and you were raising Cain. I'll put it that way, because those men were out and you wanted him, Mr. Boyle, to get those men back to work, wasn't that the way he got in on it?

"A. No. I asked him to remove the picket line.

"Q. Right.

"A. Which would keep us from bringing in sufficient competent United Mine Workers.

"Q. And he told you that the men said there was a dispute down there and you said if there is a dispute down there it would be settled under the contract, is that right?

"A. Yes.

"Q. And then later you said to Mr. Boyle when he brought up these cases, specific cases, you said—

"A. He never brought any specific cases to me.

"Q. Well, he brought them to Fitzgerald and the record will show this.

"A. That might be. I can only answer for myself. My answer to you is, as we looked at the contract, it was very plain that these prior conditions had not been lived up to by the local, and you will see in the exchange telegrams that I was very willing to meet with Mr. Boyle anywhere, at any time, in strict accordance with the contract.

"Q. But you did not process those disputes?

3074 "A. That wasn't in question between Boyle and me. It may have been with Fitzgerald, I don't know. The whole thing was, we had a picket line which would let the local boys through, but they wouldn't let the boys from West Virginia through.

"Q. But I am talking about, and we started out where you said that the prior conditions weren't fulfilled, they jumped to Step 4.

"A. Whatever the number is.

"Q. Of the contract?

"A. Yes.

"Q. Now, what I am asking you, the reason for that, the International Union got into it, you called Mr. Lewis from Florida.

"A. Exactly—no, from Chicago.

"Q. Then you went to Florida and you called Mr. Boyle from there. Now, I am not going to get in this personally, but I am familiar with part of that. But the point that I am asking you is whether or not you were the one that got the International Union to come into this dispute to settle that down there?

"A. Yes, naturally.

"Q. All right. That is all.

what you might say a hundred per cent efficiency with that equipment.

"Q. How long on an average would it take them to obtain that degree of efficiency?

"A. About two weeks.

"Q. Two weeks.

"A. Then, of course, if you could see one man was improving right along but he hadn't attained full efficiency in two weeks you would keep him on a while longer on this equipment.

"Q. Were they attaining that degree of efficiency here in the Coal Valley—in the Grays Creek operations as soon as they were up there?

"A. The first crew started in this mine on clean-up and the use of handling this equipment July 10, 1961. We closed the Coal Valley June 6, 1962, and after some negotiations with the union we started building Grays Creek No. 11 and the first cuts were put in the high wall, I'd say, some time in the latter part of August and I wouldn't say there were more than four men out of four crews that had attained 80 per cent of the efficiency, and some of them not 50 per cent of the efficiency they should have attained in 3090 less than a month's time by all criteria of what I have seen all around the other areas of the country in mechanized mining.

"Q. All right, sir. Now, getting back to the beginning of this relationship of Tennessee Consolidated Coal Company and Allen and Garcia, can you describe how the relationship originated, came to be?

"A. I first heard of Tennessee Consolidated Coal Company through the Joy Manufacturing Company men from their Huntington, West Virginia, office that had sold us the equipment for the West Virginia mines and they recommended the Allen-Garcia Company get in touch with Mr. Paul Callis in Nashville.

"I did this and then consulted with the president of

Allen and Garcia Company, Mr. William von Meding, and he advised that if I wanted to go see Mr. Callis in Nashville to go ahead. This was done in late November of 1960.

"In December of 1960 Mr. von Meding flew down from Chicago and I flew in from West Virginia and we had a meeting with Mr. Callis and Mr. Stanlee Hampton in their Nashville office.

"It was agreed that I should go down and look over the Coal Valley Mine, which was done, as I remember, approximately the middle of January, 1961. I had another mining engineer, Donald Dowling, with me and we made every working place in the Coal Valley Mine. Of
3091 what we saw we made a report, which told the Tennessee Consolidated Coal Company what we thought we would be able to do at this mine with new modern equipment.

"Q. Do you have a copy of that report?

"A. I have a copy, I don't have it with me, I have a copy at home, I do not have it here.

"Q. I suppose that the company would have a copy?

"A. Oh, yes.

"Q. Did you make recommendations about new machinery?

"A. Yes, sir, we made recommendations about new machinery, the type that should be used and—

"Q. Did the company acquire new machinery?

"A. Yes, sir, they acquired brand new machinery.

"Q. Do you know the approximate cost of the new machinery and the cleaning up of the mine, what that cost?

"A. The cleaning up of the mine and the new machinery, I would say, run about $475.

"Q. What new machinery was purchased, if you recall?

"A. Two 14B-10 Joy loading machines, two 12RB cutting machines, four 18SC shuttle cars and one Acme air compressor used in roof bolting and one used locomotive and three new supply cars from Sandford-Day.

"Q. Now, I show you a copy of an agreement. Is t
the agreement that you entered into this operation und
"A. Yes, sir."

3092 Mr. Rowntree: We offer that as the next exhi
This is the letter of agreement between Tennes
Consolidated and Allen and Garcia.

The Court: Exhibit No. 335.

(The agreement referred to above wa
marked P335 and received in evidenc

Mr. Rowntree: I don't believe it is necessary to r
that since the witness has talked about it already.

(The reading of the deposition was continued.)

"Q. Now, I show you, Mr. Fitzgerald, a copy of a le
of May 5, 1961, from you to Mr. Ridings and I will ask y
if that letter was written and mailed?

"A. Yes, sir, it was.

"Q. Does that express the agreement that you had
with Mr. Ridings?

"A. Yes, sir.

"Q. And the District?

"A. Yes, sir.

"Q. District 19 of the United Mine Workers?

"A. Yes, sir, it does.

"Q. Mr. Ridings was president of that District?

"A. At that time, yes, sir."

Mr. Rowntree: I offer that as the next exhibit.

The Court: Exhibit 336.

(The letter referred to above was mar
P336 and received in evidence.)

3093 Mr. Rowntree: This letter is dated May 5, 19
from Mr. Fitzgerald to Mr. Ridings.

"Dear Mr. Ridings:

"In our conference on Wednesday, May 3, 1961,
Palmer, Tennessee, in company with you and myself w
Mr. Edwards and Mr. Madwell of the United Mine Work
of America and Mr. Gene Poore of Allen and Garcia C

pany, all present. This group arrived at the understanding that the enumerated below and at the same time I signed the National Bituminous Wage Agreement, dated May 9, 1961, subject to these provisions and understandings. These provisions and conditions were brought about by the fact that the mine had to be rehabilitated, thus requiring a period of reconstruction of a local nature.

"1. All men employed in rehabilitation of the mine and plant, including removal of equipment from the mine and setting up other equipment in proper location for the production of coal, will be paid $1.75 per hour. Track will be laid in main air course and man way and return air course will be cleared up and other work of like nature.

"2. We expect to start some coal production during rehabilitation of the mine as indicated in No. 1 above and all men actually engaged in the production of coal will be paid at the rate of $2.515 per hour. All others, including men covered under No. 1 above, will be paid at the
3094 rate of $1.75 per hour. It was further agreed that we would have ten weeks to complete the rehabilitation of the mine but in case we run into unforeseen obstacles or it is necessary for an extension of time to complete the work another meeting will be held between Allen and Garcia Company and District No. 19 union officials. It was further agreed whenever the reconstruction work is completed all men employed on production will be paid the United Mine Workers scale. The reason for dating the contract May 9th, 1961, was to give the Allen and Garcia Company officials in the Chicago office an opportunity to study the terms agreed upon for the rehabilitation and reconstruction of the Coal Valley Mine. Also gives you men the opportunity to study the terms as shown above.

"3. It was understood that men to be employed in the Coal Valley Mine operation would be taken from Palmer Local list of men last employed in the Coal Valley operation on the basis of seniority but it was also understood any man

or men who are physically fit to work in the mines or show that they are not competent or willing to do a job to which they are assigned will not be hired or retained if hired. Men will be selected on the basis of past job classification.

"Management shall be the sole judge of each man's competence and ability to do his job.

"I believe the above covers the main points as
3095 agreed to as conditions of my signing the union contract for Allen and Garcia Company. If there is any misunderstandings in this letter of transmittal regarding these conditions and provisions, you will call me and we will have another meeting before the contract becomes effective on May 9, 1961. My telephone is Lauger, Tennessee," and it gives the number.

* * * * * * * * * *

3097 "Q. Who is Mr. Poore?

"A. He was general superintendent of all operations.

"Q. Was this a man that came down?

"A. A man that I brought in from West Virginia.

"Q. Was he an experienced mining engineer?

"A. All he had ever done since he left Marshall College in Huntington, West Virginia, was coal mining.

"Q. And how long an experience had he had, approximately?

"A. Approximately 20 years.

3098 "Q. And what happened under his control?

"A. Well, of course, as you understand, this is contour stripping and had heavy overburden of sandstone and in most places it came fairly close to the coal and some places on the coal and after a short period of time the coal petered out and it was decided to move all of the equipment about a mile and a half up over the ridge and down into the old Pocket area to a point and we moved the two shovels, the auger, bulldozers, over to this point and started the removal of overburden on the contour and some places

ran into old rooms that were uncovered when we were removing the original cut of overburden and then we started the auger. We would get holes eight feet deep and this was supposed to be a virgin point of coal and we were told that when we moved the equipment over there and, consequently, we sent a small shovel, a pilot shovel a long way ahead of the main equipment to see what we could find and we found that this whole point had been mined and there was no coal available and the trucking of this coal was contracted and the truckers belonged to the union and they were having trouble with the truckers about every week or two weeks, I can't give you the exact dates, but we had considerable trouble. They would quit work for no reason, refused to haul red dog to make roads, which they had previously done. Of course, they were paid for hauling the red dog so much a yard.

3099 "Q. Were you continuing to offer to pay them?

"A. Oh, yes, so much a yard or so much a truck for hauling red dog back as they took a load of coal into the tipples they would haul a load of red dog, which was right on the way back to the operation, but with the conditions of the Sewanee seam and the equipment available it was impossible to make money and we finally recommended to Tennessee Consolidated management that they close the strip operation down and try to dispose of the equipment, and this was done in August of '61.

* * * * * * * * * * *

3100 "Q. Now, when was it that you entered into the operation of the Coal Valley deep mine on Tennessee Consolidated property?

"A. The Joy equipment was late arriving on the job and to the best of my knowledge we started the clean up of the main entry with the Joy equipment July 10, 1961. The intake and airway was quite crooked. We had to go in and load a lot of slate and try to straighten out the entry and lay track for men and supplies. We cut down the travel

from portal to face and it was about September 4th before we actually got the new equipment to the solid faces.

"In the meantime, though, we did put some old chain conveyors with men hand loading onto them trying to drive a return airway, which had fallen completely, and drive a new one around the fallen-in area and we were producing a little coal in that manner.

* * * * * * * * * *

3103 Mr. Rowntree: We offer that as the next exhibit.

The Court: What is the date of that?

Mr. Rowntree: This is August 31, 1961.

The Court: Exhibit 339.

Mr. Combs: May I see it, please? No objection.

(The document referred to above was marked P339 and received in evidence.)

Mr. Rowntree: This is a memorandum of understanding between the United Mine Workers, District 19, Local 5881 and Allen and Garcia Company.

This memorandum of understanding is made by and between representatives of Allen and Garcia Company, management operators for Tennessee Consolidated Coal Company, District 19, United Mine Workers of America, and Local No. 5881, UMWA.

"It is agreed that:

"(1) The company will train crews of seven men. If a man cannot qualify on the first crew he will be used on another job on which he can qualify on the next crew trained.

"(2) The first crew trained will move to the night shift, but will be moved back to the day shift after the training program is completed.

"(3) Shift seniority will be negotiated after the crews have been trained and the mine is in operation.

3104 "(4) When additional men are needed, other than men now working, they will be taken from the panel

list in accordance with the agreement of May 5, 1961, and this agreement.

"(5) The same arrangements will apply to all other mines opened on the property of Tennessee Consolidated Coal Company.

"(6) In the event the company believes a man should be moved to another crew, the company will meet with the mine committee and the District, if necessary, to work out the problem.

"(7) It is agreed that the company will only hire one electrician, outside the panel list, to train mechanics and electricians at the mine, and such man will become a member of the United Mine Workers of America.

"This memorandum of understanding is effective as of August 31, 1961.

"Q. Will you state whether or not up to August 31, the date on that last exhibit, you had already employed men from the Coal Valley panel?

"A. We had.

"Q. Were you proceeding under the arrangement you had made in Exhibit 336?

"A. Yes.

"Q. Will you state whether or not any objections
3105 were made by district representatives of the United Mine Workers District 19 with respect to your manner of employing men and operating as being in violation of your previous agreement during this period of time, talking about August, July and August?

"A. Well, I might say that we were also having disagreements with the local union and the District 19 officials and I might add that that applied to practically every man on the panel as we hired them, but we did hire them as they are listed on this original sheet that was handed to me by District 19 and the Local at Palmer, 5881, and after each man has specified what he would like to apply for.

"We hired them as those jobs opened up, but starting

a machine mine and starting cleanup you don't hire four crews of men immediately and there's always a dispute of who you are going to hire and who you are going to place on the job. Although there is a seniority right on each one of these men giving their years of service starting at 36 years and eight months.

* * * * * * * * * *

3107 Q. Mr. Fitzgerald, I show you a telegram, a copy of a telegram dated November 12, 1961. Did you send that telegram to Mr. Boyle, Vice President of United Mine Workers of America?

3108 "A. I did."

Mr. Rowntree: The November 12, 1961, telegram we offer as the next exhibit.

The Court: Exhibit 341.

(The telegram referred to above was marked P341 and received in evidence.)

Mr. Rowntree: Mr. Fitzgerald to Mr. Boyle, November 12, 1961.

"Your commission advised me yesterday that the Palmer Local voted down all the recommendations that would make Coal Valley a going mine. We have run this mine for ten weeks and still do not have any qualified Joy equipment operators. If we are forced to close this mine United Mine Workers of America have lost their hold in East Tennessee. The future of this company now in jeopardy, therefore must know at once your position and plans for correcting situation."

"Q. Now, what was that all about, the subject matter of that telegram?

"A. We had been having continual trouble with Local 5881, wildcat strikes, they would always end up coming back to work under the same circumstances they had left, nothing had changed. We believe we were right in all instances. The wildcats would last from three days up to

ten. So finally the International sent in a commission
3109 of Yablonski, I believe his name was, and Watts.

"Q. Who were these gentlemen?

"A. They were presidents of districts in the East, one, I think, was out of Greensburg, Pennsylvania, and another one from probably Washington, or Pennsylvania. We first met with them in a motel in Jasper. We had them underground the next day on the day shift and they even come back after dinner that night and we had them underground on the night shift.

We had another meeting the following day in Jasper with the two commissioners and District 19 officials and local officials.

"Mr. Combs: Mr. Rowntree, so we can keep up with the time element, is this in response to your telegram that is about the same time?

"A. This is just before that telegram was sent.

"Mr. Combs: Oh, this was before?

"A. Just before the telegram was sent because I mentioned in there, you can see that point there.

"Mr. Combs: Okay.

"A. And after this meeting Gene Poore, Bill Kennedy and myself went to the restaurant at this motel in Jasper to have supper, dinner, and while we were there Mr. Yablonski came in to talk with us and he told me what he
planned to do at a meeting of the local the next day
3110 in Palmer, the next day being Saturday.

"Do you want me to tell what he told me?

"Q. Go ahead.

"A. Mr. Yablonski told me he was going to recommend to the local that they allow us to bring in two competent Joy loading machine operators. After we did this the cutting machine men we had would not be able to keep up loading coal, having it ready for loaders, and in this way we should be able to get competent cutting machine operators. After we had competent cutting machine opera-

tors the competent Joy loading machine men should run the present shuttle car men off of the job because they would not be able to haul the coal.

"Mr. Yablonski asked me if I would be at the Palmer office on Saturday morning up until noon and I told him I would. He said he would see me after the meeting.

"The meeting was over about 11:30 and no one stopped at the office. I went home about two o'clock and at 7:30 that night—

"Q. Mr. Fitzgerald, who was suggesting that the cutting machine operators and the shuttle car operators would have to be changed?

"A. Mr. Yablonski, one of the commissioners.

"Q. Go ahead.

"A. At seven o'clock Saturday night Joe called
3111 me and said that the local had turned him down cold, so he left and we had no more contact with each other.

"Q. Did this telegram, Exhibit 241, result from this departure of the commission?

"A. Yes, it is so stated approximately in the telegram.

"Q. Were you having any grievance cases during this period of time, was the company confronted with any grievance cases under the contract?

"A. What is the date of that telegram again, November 12th?

"Q. 1961.

"A. Sixty-one?

"Q. Correct.

"A. I do not believe we had a case outside of a possible man being turned down on physical examination and if he was turned down there is nothing in the contract that said we had to hire him and put him underground and jeopardize other men's lives and I don't believe was a grievance case brought up at that time.

"Q. Later on did you have grievance cases?

"A. Well, as far as I was concerned, I don't think we ever had any legitimate grievance cases.

"Q. Was any brought up under the machinery of 3112 the contract?

"A. There were some brought up. District 19 submitted about three on three different occasions and on each occasion the name of three men to act as arbitrator, which we refused to accept. We submitted one list of three men, which District 19 refused to accept, so we were at a standstill and I first recommended that Mr. John L. Lewis act as arbitrator. Naturally he turned us down and recommended Joseph Kennedy act as arbitrator and we accepted him.

"Q. Who was Mr. Kennedy?

"Mr. Combs: Is that Joseph Kennedy or Thomas?

"A. I am sorry, Thomas Kennedy. Mr. Thomas Kennedy at that time was president of the International.

"Q. What was the outcome?

"A. Mr. Kennedy ruled against us.

"Mr. Owens: You don't mind me interrupting, is this all after November 12th?

"A. Oh, yes. This was way after November 12th. I don't know the approximate dates of these things but I know it was after November.

"Mr. Combs: Mr. Rowntree, just for a matter of clarity, I don't want to interfere with you but it wasn't clear to me whether or not he accepted Mr. Kennedy on Mr. Lewis' recommendation.

"A. Yes, we accepted Mr. Kennedy.

"Q. Do you recall who was involved in those 3113 particular cases?

"A. No, I do not.

"Q. I will ask you whether or not Waldon Shrum was one of them, if you recall?

"A. I don't recall that now, I believe he was, now, he might have been, I don't remember.

Deposition of Perscival Henry Fitzgerald—Direct

"Q. I show you a telegram dated February 6, 1962. Was that telegram sent to Mr. Boyle?

"A. Yes, sir."

* * * * * * * * * *

Mr. Rowntree: This is from Fitzgerald to Boyle.

"Officers of District 19 are permitting violations of our contract by members of Local 5881 and Representative Howard Madewell. The mine committee was not elected by the workers of the Coal Valley Mine. These union representatives are in violation of Section 13 through 16 and Section 21 of the Southern Tennessee agreement as well as the rehabilitation agreement entered into with your International commission covering Section 31 on seniority. Implied threats and intimidations will not be tolerated. President Shrum of the Palmer Local at a meeting last night stated to us, 'We are going to run this mine
3114 with men that are here.' I have already reported to my company in Chicago. District 19 officials absolutely cannot handle this situation. I am not coming to Washington. It's time you personally came down here to straighten out this whole situation."

At this point I state, "The parties stipulate that the names of the employees involved in the grievance just mentioned were Waldon Shrum.

"A. Jack Long.

"Mr. Rowntree: Jack Long.

"Mr. Combs: And Marshall Sweeton.

"Q. Now, what was going on and what prompted this last exhibit, the telegram of February, 1962?

"A. Well, we were continuing to have our troubles with the local and the mine committeemen were not working. The contract specifically provides that anyone on the mine committee must be employed at the mine where he acts on the mine committee. We thought it might help our position if we had all men on the mine committee that were working at the mine at the moment.

"Q. In other words, they would be interested in maintaining production?

"A. We thought so in trying to talk with other men that were there.

"Q. What was the outcome of that telegram, any-
3115 thing happen?

"A. No, sir. What is the date of that again?

"Mr. Owens: February 6, 1962.

"A. Well, that may have been about the time that after that telegram possibly, now, I don't remember dates, but that may have been about the time they sent in the second commission. Do you men have the dates on that?

"Mr. Combs: Yes.

"Q. There was a second commission sent in?

"A. Yes, sir, there was a second commission sent in.

"Q. Do you recall who was on that second commission?

"A. George Titler from Buckley and Hibbetts from Big Stone Gap, Virginia.

"Q. Were these both district presidents?

"A. They were both district presidents.

"Q. Of the United Mine Workers?

"A. Of the United Mine Workers of America.

"Q. What happened on that visit of the commission?

"A. Well, the first thing that happened, before we knew that these commissioners were in the area they, I believe they had talked to every man on that panel, those working, those not working, and I suppose supervised with them, that's my candid opinion.

"We had a meeting with them and they told us that we had not treated the panel fairly, so they gave us a
3116 list of names. We even took some men back and put them on the same equipment or other equipment to give them another opportunity to try and qualify, which from my experience has never been done before in any district in the United States, but we did try that to try and satisfy the second commission and we

had the same persons, some of those men if we left them on a full day would have killed the men working around them and it ended up, the men working ended up in about the same position we were before the commission came in. We had no help whatsoever.

* * * * * * * * * *

3119 "Q. Was there a meeting in the Washington office of the United Mine Workers about this situation down in the Coal Valley Mine?

"A. Yes, sir.

"Q. Do you recall when that was?

"A. I do not. It was some time, I would say, in the spring of 1962 before we closed the Coal Valley Mine. Mr. John L. Lewis was there, Thomas Kennedy, Joe Kennedy, District 19 officials, I can't name the ones that were there but most of the officials.

"Q. Was Mr. Ridings there?

"A. Mr. Ridings was there, Albert Pass was there.

"Q. Mr. Gilbert there, do you recall?

"A. No, Mr. Gilbert was removed from this field
3120 before I arrived here.

"Q. How about —

"A. Joe Yablonski was there, I think Watts was there, George Titler was there, Hibbetts was there, Mr. von Meding, Gene Poore and myself with the Allen-Garcia Company and Mr. Houston Beaumont.

"Q. Were any Joy Manufacturing Company people there?

"A. Pete Collins was there also.

"Q. Was this the man that had been training?

"A. Been at the mine training, endeavoring to train the workmen.

"Q. What happened at this meeting?

"A. Mr. Kennedy asked me which side wanted to start the meeting.

"Q. How did the meeting come to be held?

"A. That I cannot recall right now but it was still over, the whole thing, everything centered around the labor situation we were having. That was really what brought it all about.

"Q. All right, sir. What happened?

"A. And Mr. Kennedy asked me who would start the proceedings and I suggested that the UMWA start it, start the proceedings.

"So I don't know whether Mr. Thomas Kennedy or—but someone on the union side asked who wanted to
3121 act as spokesman and I believe the first man was Waldon Shrum, isn't that right? And Waldon got up and, of course, there wasn't a good word about management, we were slave drivers, we worked them in water and, oh, many other—I can't recall other things that he said about the operation, probably dangerous, something like that was undoubtedly injected into it, and when we got through Mr. Lewis was there and looked at Waldon and I don't remember his exact words but he said, 'Look, I started in the coal mines in Iowa. How much water did you work in?'

"Waldon said, 'Probably up to my ankles, and that probably might have been for a day or less.'

"And Mr. Lewis said, 'Well, I worked in water up to my waist and all those kind of things.' And there was a little more conversation, I can't recall much of it, but Mr. Lewis looked at Waldon and he said, 'You are the most goddamn contemptible man I ever saw and I don't want to have anything to do with you.'

"With that Mr. Lewis was closer to an exit door and Waldon Shrum walked out and tried to slam the door but there was a stop and he couldn't, so he never appeared in the meeting again after that.

"Q. What was Mr. Shrum's position?

"A. He was president of Local 5881.

"Q. At the Coal Valley local?

3122 "A. That's the Coal Valley local.

"Mr. Owens: What did you say Mr. Lewis said to Shrum?

"A. 'You are the most contemptible goddamn man I ever tried to talk to and I don't want to have anything more to do with you.'

* * * * * * * * * *

3123 "Q. Now, do you recall when Coal Valley closed down?

"A. June 6, 1962.

"Q. I believe that was because of a rock fall, is that right?

"A. Yes, sir, and no place to put the rock and we had been in 12 feet of rock in six headings. I might add another mining engineer came in there and made an examination for Consolidated Coal Company and we had previously stated we should go to a pre-determined distance. We had just about hit it.

"This other mining engineer suggested we work until miners' vacation, then if conditions were no better, close the Coal Valley Mine. The miners' vacation, of course, was the end of June.

"Q. Where did you move from Coal Valley?

"A. Grays Creek.

3124 "Q. Is that on Tennessee Consolidated Coal Company property?

"A. Yes, sir.

"Q. Was there any change in the agreement with respect to the hiring of men from the Coal Valley panel?

"A. We had several meetings before we decided to open what is now called the 11 mine with District 19 officials. We weren't making much headway, so I finally posted a notice on every available space in Palmer of a list of 20 men to come out. This was without District 19 sanction, 20 men to come out and start removal of equipment from the Coal

Valley Mine, all equipment, track, feeder cables, everything in there.

"The day after the notice was posted Mr. Ridings called me and wanted a meeting. I told him I would meet with him any time and in the meantime the directors of Consolidated Coal Company wanted a meeting in Nashville to decide what to do and Mr. Ridings set the date of the meeting as of the morning of the day we were to be in Nashville for the eleven o'clock meeting and I suggested he be in Palmer at seven o'clock in the morning and we had a long discussion of what would have to be done before we could advise the directors of Tennessee Consolidated Coal Company to spend the money in opening a new mine.

3125 "Among them, the first point was that we were not going to carry the panel from Coal Valley to the new mine, which was contrary to the contract to begin with, and we were going to hire the men that we thought from the old Valley Mine that were more or less qualified to operate this equipment and I gave him a list of the first crew, that is, the crew to operate one set of equipment in the Coal Valley Mine.

"He then stated he was going to have a meeting with the local at the school house that morning and I said I would have to have a call by eleven o'clock at Nashville before I could tell the directors of Tennessee Consolidated Coal Company whether or not to spend any money on the new mine or just get the equipment out of the old mine and forget the coal business.

"Mr. Ridings called me at eleven o'clock, shortly after eleven o'clock, and my understanding over the telephone was that he agreed with everything that we had discussed and that the Palmer Local had accepted it.

* * * * * * * * * *

3132 "You indicated that some of the men formerly employed at the Coal Valley Mine felt they had grievances because men at the mine at Grays Creek had

been hired without regard to the order in which the men were hired at the Coal Valley Mine in 1961. We promptly informed you that this also was not contract because under the contract men do not acquire any employment rights at the new mine such as seniority and the right to file grievances until they have been hired at the new mine. Mr. Ridings, perhaps you know that the labor contract I signed with your union mentions only the Coal Valley Mine.

"Because of your persistence in reviewing issues that have already been settled, we suggest you re-read my letter to you of July 25, 1962, which clearly states our position on this subject. Furthermore, since your memory of the facts of this matter seems vague, we believe it worth while to review them for the record.

"On June 13, 1962, Mr. Howard Madewell and the Palmer Local Committee were present at a meeting at our Palmer office. During this meeting Mr. Madewell and the committee were informed that the Coal Valley Mine would
3133 have to be closed. We asked for a construction rate for removal of the equipment and to apply to 'construction' work at a new mine if Tennessee Consolidated Coal Company should decide to open one. We also asked union agreement for men to do 'construction' work during the miners' vacation. During this meeting it was very clearly stated and fully understood that management would pick the men to be employed at this work.

"In addition Mr. Madewell and the committee were told that the Coal Valley panel would not apply or have any standing whatsoever at the new mine and further that not all of the men then employed at Coal Valley were qualified to operate the Joy equipment.

"On Friday, June 15, we met with you, Mr. Edwards, Mr. Madewell and members of the Committee. You told me that you thought the men would work at the $1.75 per hour construction rate that we had proposed and that the men we needed would be available for work during the

miners' vacation. I again told you that we would not agree to accept the Coal Valley panel at the proposed new mine in Grays Creek nor would we agree to hire men at Grays Creek in the order they had been hired at Coal Valley.

"In the meeting of June 15th, I gave you our list of seven men that would be hired for the first crew at Grays Creek.

I also made it very clear to you and the other union
3134 representatives that unless the men were willing to work under the conditions that we outlined that I would have to advise the directors of Tennessee Consolidated Coal Company not to open the new mine in Grays Creek.

"I also told you that unless we got the cooperation of the men and the union TVA probably would not approve our request for a new mine source of supply under the contract. This would automatically kill any plans for a new mine. I believe the rest of this problem is adequately explained in my letter to you of July 25, 1962. We meant exactly what we said in that letter.

"On the basis of your representation to me on the morning of June 20, 1962, I recommended to the directors of Tennessee Consolidated Coal Company that they proceed with the opening of the new mine in Grays Creek, which was done. Now in view of harassment by Waldon Shrum and others on the subject of the Coal Valley Mine panel we are beginning to question the good faith of the United Mine Workers of America in this matter.

"We request that you, as president of District 19, review this situation and take immediate steps to correct it."

"Q. I show you a letter of August 21, 1962, from you to Mr. Thomas Kennedy.

"A. Thomas Kennedy, President.

3135 "Q. Mr. Thomas Kennedy, President of the United Mine Workers, and ask you if you sent that letter?

"A. Yes, sir, I did.

"Q. Was there any change in the attitude of the union

or any change in the situation confronting you at the tim from these various conditions we have talked about at th time you sent that letter?

"A. No, sir.

"Q. Were the conditions that you have related here co tinuing on August 21, 1962?

"A. Yes, sir. There was a continuous picket line at th mouth of Grays Creek with men exposing bullwhips. W know they had guns, they weren't carrying them, the weren't showing, but they were there, but they were snap ping their bullwhips, some of them ten feet long, and tha went on, I'd say, from probably the latter part of July.

"Q. 1962?

"A. 1962 up until and after this date of this letter, Au gust 21, 1962.

"Q. And this letter constitutes a cancellation of th United Mine Workers contract?

"A. Yes, sir."

Mr. Rowntree: We offer that as the next exhibit.

The Court: Exhibit 347.

Mr. Combs: I was under the impression that ha
3136 already been placed in evidence, the cancellation o that contract. I have no objection.

Mr. Rowntree: I don't believe it has.

The Court: Exhibit 347.

(The letter referred to above was marke P347 and received in evidence.)

Mr. Rowntree: This letter is from Fitzgerald to Kennedy Thomas Kennedy, August 21.

"Pursuant to the terms of the National Bituminous Co Wage Agreement of 1950 as amended effective Decembe 1, 1958, this is to officially notify you that your wage agree ment dated May 9, 1961, covering the Coal Valley Mine a Palmer, Tennessee, terminates 60 days from the date o this letter.

"I hereby offer to meet and negotiate a new contract at such time and place may be mutually agreed upon."

With a copy to the Federal Mediation and Conciliation Service.

"Q. I show you a notice of August 20th from the District Officers of the union To All Members of the United Mine Workers of America in the Southern Tennessee area and ask you if you knew about a meeting of the local union members called for by the District?

"A. Yes, I saw this shortly after it came out.

"Q. Did the strike continue on after that meeting
3137 or the picket line?

"Q. Will you file that notice of the UMW meeting as an exhibit?"

Mr. Combs: May I see that?

"A. As a matter of fact, the picket line continued into September because I had Mr. von Meding down here in September and took him through the picket line and went through it in August."

Mr. Rowntree: We offer this notice as the next exhibit, official circular of UMWA, August 20, 1962.

The Court: Exhibit 348.

(The circular referred to above was marked P348 and received in evidence.)

Mr. Rowntree: This is the first paragraph:

"There will be a meeting of all members and their wives at the Whitwell High School at 10 a.m., Central Standard Time, on Saturday, August 25, 1962."

Mr. Combs: Does counsel mind reading the rest of it?

Mr. Rowntree: "Each and every member and their wife is cordially invited to attend this meeting to hear your District officers discuss some of the problems that confront you and your organization.

"Many rumors are afloat in the area so come out
3138 and hear the truth.

"There will be a good singing as well as speaki
so make plans to attend this important meeting.

"Don't forget, bring the wife.

"Fraternally yours, J. W. Ridings, President, W.
Edwards, Vice President, Albert Pass, Secretary-Tre
urer."

(The reading of the deposition was continued.)

"Q. What happened when Mr. von Meding was goi
through the picket line?

"A. Nothing. They were just standing there, they did
know whose car was coming and they didn't stop any of
management from coming through but they stopped a
new man that they didn't know that belonged on the mo
tain. They stopped him from going through and turn
them all around before he could even get down to see
mine, if that's all he was looking for, or tried to get
ployment or whatever it was, he was just turned around

"Q. Had you tried to hire experienced personnel
this job?

"A. We brought two shuttle car operators in from W
Virginia that Mr. Poore knew. They were excellent ope
tors and could do the job. This was why we were in
Coal Valley Mine. They worked one shift and that was
highest production we had ever had that day.

* * * * * * * * *

3147 (The reading of the deposition was continued.)

"Q. Mr. Fitzgerald, do you know whether or
that is the decision of the umpire on the three cases,
three grievance cases that we talked about before?

"A. What is the question on this?

"Q. Whether you know whether or not that is a co
of the decision of the umpire on the three grievance case

"A. Yes, sir, it is."

3148 Mr. Rowntree: File that as the next exhibit.

(The decisions referred to above were
marked P350 and received in evidenc

Mr. Combs: I'd like to read this. I think it illustrates somewhat what has been going on. It is a grievance between Waldon Shrum, member of Local Union 5881, against the Allen and Garcia Company. Grievance No. 1.

"Decision of the umpire.

"The instant case resulted from these circumstances: Following a shutdown the company signed the National Bituminous Wage Agreement on May 9, 1961, and endeavored to re-open the mine and equip it with new machinery which necessitated employment of less men than were previously required. Unrest occurred and a tense situation developed between management and its employees. Numerous efforts were made to find answers to the problems. In fact, conferences on these vexing problems were held in the umpire's Washington office. Finally, on August 31, 1961, representatives of Local Union 5881, together with officials of District 19, UMWA and Allen and Garcia Company signed a memorandum of understanding which participants felt would solve all existing difficulties.

"The case was submitted to the umpire on statements of fact and briefs of argument by the respective parties.

The umpire has carefully and painstakingly consid-
3149 ered all of the evidence submitted. The record shows grievant had 33 years experience in the mines. He started as a laborer for this company on May 31, and performed rehabilitation work required to clean up the mine preparatory to production. Subsequently he was placed on a new type cutting machine and, after a period of retraining, operated it for several months until he was cut off on November 13, 1961. On December 20, 1961, he was re-employed as a stoper operator.

"The question involved is: Does this action by the coal company violate the terms of the collective agreement and the memorandum of understanding of August 31, 1961?

"Company contends grievant could not efficiently operate the machine or cut a full quota of places after a period

of retraining. Grievant states he not only competently oper ated the machine and cut all places that were properly pre pared for cutting but could have cut more places if h were not directed by management to assist in timbering moving rock falls and roof bolting.

"In cases of this nature management is required t present specific evidence proving that grievant was no capable of performing his work. In the opinion of the um pire, the weight of evidence in the record of this case faile to prove that grievant was not qualified to efficientl
3150 operate the machine. Moreover, the umpire distinctl recalls the highly complimentary statements mad about the grievant's capabilities by representatives of man agement during the conferences held in his office which ar mentioned heretofore in the first paragraph of Page 1 o this decision.

"Therefore, the grievant is sustained.

"Signed, Thomas Kennedy, Umpire."

"Grievance No. 2. Jack Long, member Local Union 588 United Mine Workers of America, versus Allen and Garci Company.

"Decision of the umpire.

"Although the facts in this case are not exactly lik those contained in the record of Grievance No. 1 regard ing Waldon Shrum from the same mine, contemporaneousl decided, they are similar to a degree warranting favorabl consideration on behalf of the grievant. The case is, there fore, decided in favor of grievant."

* * * * * * * * * *

3151 CROSS EXAMINATION

(Mr. Rayson read the questions and Mr. Chamblis the answers.)

"Q. Mr. Fitzgerald, could you recall approximately how many men there were on the Coal Valley panel?

"A. The original list had 114 and there is another one

added in pen by my writing, made it 115. It was added six months after they gave me the original list.

"Q. About how many of these men expressed an interest in working at the re-opened Coal Valley Mine?

"A. I would say practically all of them.

"Q. Was there a great clamor for the jobs in the
3152 new mine?

"A. The new mine, you mean the old mine?

"Q. That is, the revised Coal Valley Mine.

"A. The revised Coal Valley Mine?

"Q. Did you make any announcements at or about the time you started working on the Coal Valley Mine as to how many job openings there would be at the new mine or at the revised mine?

"A. I believe so.

"Q. How many were there to be?

"A. I think I said in round figures approximately 50.

"Q. This, you say, was publicly announced and known to the men on the panel?

"A. It wasn't written in a letter or posted, it was discussed with Jim Ridings, Manuel Edwards.

"Q. Local Union Committees?

"A. Local Union Committees, yes, sir. We said approximately 50 men because you never know when you revise a mine actually how many men it's going to take to start out with a mine and if you have to add them you add them.

"Q. Were the men on this panel rather old from the standpoint of service in coal mines?

"A. Rather what?

"Q. Old?

"A. Extremely.

3153 "Q. And they were quite old in years?

"A. The average was 50.

"Q. From your experience is that a high average?

"A. That's a high average for a mechanized mine, yes, very high.

"Q. Did the age of these men have something to do wi the way they responded to the training, as you saw it?

"A. I would say it did.

"Q. To a marked degree?

"A. I would say yes.

"Q. Do you know what the experience of these men ha been, that is, what kind of equipment had they worked o

"A. Well, they had worked on equipment that had be removed from the last mine. I knew they were using th type of equipment in 1953.

"Q. Would their work on this equipment give them a experience which would be valuable to them in learning use the new equipment?

"A. It should have given them some, yes.

"Q. But you feel that their age was a definite fac against their being able to learn quickly and adapt the selves to these new circumstances?

"A. Well, let me put it this way: Their age, of cours had something to do with it, but it goes way back muc farther than that.

3154 "You don't learn these things when you go inspe the mine in three days' time and make a report o it, but these men had never worked, they were never force to produce what they should have produced by the old ma agement and that was one of our troubles when we arrive

"We wanted eight hours, that includes portal to port time and, of course, it includes the 30-minutes lunch, b we wanted approximately, we'll say, we were getting the face in 14 minutes and back out in 14 minutes, 30 minute for lunch, we wanted seven hours work. They weren't use to it, they couldn't take it because they hadn't worked fo let's say, 20 years.

"Q. You are suggesting that the former manageme was somewhat lax in its treatment of these men?

"A. Yes, sir, I am. We had men—to go a little bit furthe on that same question—we had even have men apply fo

mber jobs that couldn't even set a timber, they had been orking in that mine for 30 years.

"Q. All right, sir. How long after you opened the Coal alley Mine, that is, re-opened it, did disagreement between ie men commence as to who was to have these jobs?

"A. Well, I can't be absolutely sure on that question ut I'd say we started having little disputes, small argu-ents, probably not more than three weeks after July 10th.

"Q. How long a period of time would you give a 155 man for training on the equipment to ascertain whether he was competent or not?

"A. We had some men, we had some men on that equip-ent from July 10th until March, August, September, Oc-ber, November, December, January and February and arch.

"Q. Were there not some people that you laid off a little rlier than eight months?

"A. Oh, yes, a lot of them, many of them.

"Q. Was there a minimum of time that you would keep man on the job in order to ascertain whether he was quali-ed or not?

"A. Well, we told Mr. Ridings, we told Joe Yablonski nd his crew and we told Titler and we told everyone we nought that a man should be able to show some ability, me chance of improvement at least in three weeks, but e cut some men off in three days' time because they were st too dangerous to other men around them, as a matter f fact, they had heart trouble, they were different, and ey would swing that rear of that loading machine around nd, Brother, if that hit you in the head you were done, nd we had to take them off for their own protection as ell as the men working around them.

"Q. Did some of these complain that they hadn't been iven a fair chance?

"A. Right, yes, sir.

3156 "Q. Some of them were rather strong-minded, I take it from your former testimony?

"A. They were all, you might say, strong-minded, not some.

"Q. Were some of those cases taken up as grievances?

"A. Well, the only three cases we have had that come up to arbitration were the ones that I just read there, Shrum and Jack Long and Sweeton, Albert or Marshall Sweeton.

"Q. Were there any grievances that were short of arbitration?

"A. Not to my knowledge. The only thing that was brought up on grievances, the men that we didn't take to the new mine, you don't carry an old panel to a new mine.

"Q. Yes, sir. I wanted to ask a few questions about that. Now, when you went to the Grays Creek Mine you went there, first of all, because you had to close the Coal Valley Mine, is that correct?

"A. That is correct, yes, sir.

"Q. And that closure was necessitated solely by physical factors in the seam, nothing else?

"A. That is correct.

"Q. Did you immediately undertake to discuss with the union some circumstances under which the new mine would be opened?

"A. To the best of my knowledge it took about

3157 two weeks before we could get a meeting with Mr. Ridings and other officials of District 19 to discuss the new mine, what we thought should be done and what our thoughts were on the complete labor situation.

"Q. Was one of the factors that you took up with them the matter of a construction rate to open a new mine?

"A. That's right.

"Q. Were you able to work out some agreement on that?

"A. Oh, yes, worked it out very well, no trouble.

"Q. They were prepared to cooperate with you on that?

"A. Yes, sir.

"Q. Was there a disagreement after you opened the Grays Creek Mine, Mr. Fitzgerald, as to whether the memorandum of understanding which you had signed while the Coal Valley Mine was open was in operation applied at the Grays Creek Mine?

"A. Yes, there was a discussion, there was discussion on both sides.

"Q. And was it proposed that certain men who had not been given an opportunity to work at the Grays Creek Mine had grievances which should be submitted to arbitration and in which that question would have been involved?

"A. Men that hadn't worked at Coal Valley, you mean?

"Q. Yes.

"A. Not to my knowledge. We had gone through
3158 the complete panel.

"Q. Were there some grievances proposed to be taken to arbitration after you went to Grays Creek?

"A. Yes, the union brought them up.

"Q. And did you take the position at that time that there were no legitimate grievances?

"A. Yes, sir.

"Q. And that you, therefore, would not arbitrate these grievances?

"A. Yes, sir.

"Q. Did the union ever reply to your letters of January or July 25th and August 6th, 1962, Exhibits 11 and 12?

"A. I'd have to see the letters and review them to find out. This letter of July 25th in it I named the first crew that we were to hire. It was my understanding that Mr. Ridings accepted that without question. I don't believe there was ever anything in writing answering either one of these letters, to my knowledge I don't remember it, there may have been.

"Q. Yes, sir. Do you recall meeting with the union at the motel at Jasper in August or September of 1962, at

which the matter of arbitration of certain grievances wa
discussed?

"A. Well, we met there several times and it
3159 possible they were discussed, I can't recall it righ
at the moment.

"Q. Do you recall telling them that you would submi
the case to 12 men rather than one?

"A. That what?

"Q. That you would submit any claims that were in
volved to 12 men rather than one, Mr. Fitzgerald? Do yo
ever recall making your remark like that to the union?

"A. It is possible. I was boiling and I might have sai
that. I don't recall it. I could have, I don't dispute it.

"Q. At the same time you were refusing completely t
arbitrate these cases?

"A. Yes, sir, I was, I remember that.

"Q. Which you felt were not justified?

"A. I remember that at the motel in Jasper, yes.

* * * * * * * * *

3165 MARSHALL MEEKS,

a plaintiff, called as a witness at the instance of th
plaintiffs, being first duly sworn, was examined and testifie
as follows:

3186 CROSS EXAMINATION

By Mr. Owens:

Q. Mr. Meeks, how many mines did you have operatin
in 1955?

A. Fifty-five? Well, I don't know, Jack and
3187 started off in '64, I mean '54, that's when I first wen
to Tennessee Products and I bought two mines ou
I started up with—I started up with two mines, 18 and 19
then I bought 17 out and turned right around and bough
36 out, I believe, I believe that.

Q. You had four mines?

A. Yes, sir, about that.

Q. You say you and Jack, that's Meyers, is that his name?

A. Meyers.

Q. Were you in partnership?

A. No, sir, I just had my leases out to him, leased the mines out, he put it in the hopper, all I done was haul the coal.

Q. The only thing you did for these mines was to haul the coal?

A. Yes, sir.

Q. And you were not operating the mine?

A. I wasn't operating the mines.

Q. Who was the man that did operate these mines?

A. I had Bill Meyers, Joe Haynes, Jeppy Meeks.

Q. What is his name?

A. Jeppy Meeks.

Q. What Meeks?

A. Jeppy Meeks.

3188 Q. Jeppy Meeks?

A. Ernest Sanders.

Q. Joe Haynes?

A. Joe Haynes, Ernest Sanders.

Q. Ernest Sanders?

A. Yes.

Q. And you hauled the coal?

A. Yes, sir.

Q. From their mines with your trucks?

A. Yes, sir.

Q. You were in the coal hauling business?

A. Yes, sir.

Q. And how long did that continue?

A. They generally last about two years, these mines do that they let you have, they generally last about two years.

Q. They begin to work out in 1956?

A. Yes, something like that.

Q. So that even they were out of the coal operating business in '56?

A. Some of them were and then we move on around to, let me see, it would be 36 and 37.

Q. And do you recall—

A. (Interposing) Two more mines on around the hill later.

Q. Number 36 and Number 37?

A. Yes, sir.

* * * * * * * * * *

3189 Q. Now, the four mines previous to that, were they in the Beech Creek area, too?

A. Yes, sir.

Q. And these also were small mines?

A. Just small mines, mule mines.

Q. And they worked out shortly, didn't they?

A. Yes, sir.

Q. Were those mines, the last two, I don't know how to say it, opened up into solid or were those already mines that had been worked?

A. We cut into the big mines, Whitwell mines, after you go so far, you see.

Q. You had a lot of water in those mines, didn't you?

A. Well, we had some water.

Q. And were those mines flooded out?

A. No, sir, not that we was working out.

Q. Then your income during those years was from the hauling of coal?

A. Just about, yes, sir.

* * * * * * * * * *

3190 Q. Did you purchase the equipment that was used in your Griffith's Creek mine?

A. Yes, sir.

Q. And was that financed by the Tennessee Products people?

A. Well, they went on a note over here at the bank for me.

Q. And then when that mine closed down, they took over the machinery?

A. No, sir.

Q. They didn't take it over?

A. No, sir, I still got the machinery.

Q. How was the note paid off?

A. I paid the note off, yes, sir.

Q. And how about the new machinery?

A. Well, I still got it but they never did come and get it. I bought a Long loader just before I come out on strike, you see, they never would come and get it and I still got it, I am paying on it now.

Q. You mean that the people that you purchased
3191 the equipment from wouldn't come and get it?

A. No, sir.

Q. And do you know why they wouldn't come and get it?

A. They said when I went back, when am I going back, wanted to know if I had any chance of going back to work or not.

Q. Did you tell them you weren't going back to work?

A. No, sir.

Q. But you had already decided to go out of business though, hadn't you?

A. Well, I did there for a while.

Q. And this was during the time of the Labor Board hearing?

A. Labor Board hearing?

Q. When you were trying to get them not to count the votes of your employees in that election, isn't that right?

A. Well, I didn't know anything about the election, I didn't go myself, none of my men didn't go, I don't think.

Q. Well, you testified, though, didn't you, at the Labor Board hearing that you were out of business and had no intention of returning?

A. Yes, sir.

Q. And that was for the purpose of not counting the employees that voted in that election?

A. I didn't know what it was for.

* * * * * * * * * *

3193 Now, are you testifying that Mr. Gilbert told you not to pay the Welfare Fund in 1955?

A. No, sir, I ain't testifying that in 1965, I ain't seen Mr. Gilbert.

Q. Beg your pardon?

A. I haven't seen him in '65.

Q. No, '55.

A. Fifty-five, yes, sir.

Q. He told you not to pay it?

A. Told me to pay whatever I could.

Q. Did you understand from that that he meant that you weren't to pay the full 40 cents?

A. That's the way I understood him. He told me, "Pay whatever you can." He said, "Some weeks send in no work." He went far enough to told me that.

Q. Some weeks send in no work?

A. No work.

3194 Q. This is what you did?

A. I just done exactly what he told me.

Q. You had your wife, told her not to put that tonnage into the Welfare Fund?

A. Yes, sir.

Q. Even though you could pay it?

A. Back when I was running these little mines I couldn't pay it.

Q. Don't your income tax returns and your income show that you could pay it?

A. Not back then.

Q. What years are you talking about?

A. Back in '53, '54 and '55, through there.

Q. You didn't make anything during those years?

A. Not too much.

Q. Did Mr. Gilbert say you were to determine how much money you could make?

A. What is that?

Q. Did he tell you you could determine how much money you could make?

A. No, sir, he didn't tell me that.

Q. Then in '55 he told you that you didn't—just pay what you can?

A. No, in '55 I think we signed for Mr. Travis to *to* take off, take off the welfare in '55.

3195 Q. So that in '55 you had an authorization for them to withhold the full 40 cents?

A. So much on a ton.

Q. Do you know if that was done?

A. I don't know.

Q. Did you ever make an agreement with the Tennessee Products, Mr. Travis, that you would pay 5 cents on every ton and then they would pay 35?

A. I don't remember that far back but I did went ahead and pay some, I do know that, all during that time.

Q. Well, you authorized the company to withhold the full 40 cents during all of that time, isn't that right?

A. Well, I don't remember that far.

Q. Well, didn't you testify that you signed an authorization?

A. I signed a slip for him to hold off so much, but I don't remember how much.

Q. Was it ever changed?

A. Well, it has changed, I think when we went over on the GC-2 mine.

Q. Mr. Travis came to you and said, "We are going to make some arrangement to get out of that," didn't he, "so we don't have to pay the 40 cents or the full 40 cents."?

A. I don't remember.

Q. Do you have any records that reflect that? Do

3196 you know if there's any records or any other books other than what your wife brought here?

A. I think that's the only books we have.

* * * * * * * * * *

REDIRECT EXAMINATION

By Mr. Chambliss:

Q. Back in the early days when you were just getting started, were these mines—did you lease the mines yourself?

A. Yes, sir.

Q. And then you sub-leased them out to the operators?

A. Sub-leased them, yes, sir.

* * * * * * * * * *

3197 LON SHELTON VARNELL,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Please state your name, sir.

A. Lon Shelton Varnell.

Q. Where do you live, Mr. Varnell?

A. Sewanee, Tennessee.

Q. What is your occupation or profession?

A. A coach with the University of the South, also I have business in the coal mines, I have a Chevrolet dealership at Tracy City.

Q. When did you first enter into the coal mining business?

A. In 1957.

Q. In what area or location did you enter into the coal mining business?

3198 A. It was mines that I leased from Tennessee

Products and Chemical Corporation on Daus Mountain.

Q. At this time I hand you an instrument, it's an agreement between Tennessee Products and Chemical and Lon Varnell of Tracy City, and ask you if you can identify that piece of paper?

A. That represents the lease agreement between Tennessee Products and Chemical Corporation and myself.

Q. What is the date of that agreement, Mr. Varnell?

A. March 15, 1957.

Q. Is that the copy of the agreement that you executed with Tennessee Products?

A. That's correct, yes, sir.

Q. Will you make that an exhibit to your testimony?

A. I do.

The Court: Exhibit No. 352.

(The lease agreement referred to above was marked P352 and received in evidence.)

Q. When you first started into the mining business on Daus Mountain, what type of mine did you have, sir?

A. We operated a mule mine and hand-loading.

Q. Would you tell us what you mean by "mule mine and hand-loading"?

A. Well, in other words, we got the coal out from underground with *with* pick and shovel and we used the
3199 mules to haul it out to the tipple.

Q. What kind of equipment did you have in that mine at that time, sir?

A. Well, we had rail or track, whatever terminology you would want to use here. Of course, we had, of course, timbers, we had cars that we used, of course, for loading the coal in to move out to the tipple.

Q. Who owned the equipment that was located in the mines?

A. I did.

Q. Subsequent to 1957 did you change your method of mining?

A. You mean from the period of 1957 until we were shut down in '62?

Yes, sir, we did.

Q. What changes were made in your mining methods?

A. Well, we went from the hand-loading mule mines to mechanization.

Q. Would you tell us what kind of equipment that you had in your mine at the time you changed to mechanization?

A. That we had before we went into mechanization?

Q. When you went into mechanization.

A. We changed from the, of course, the mule mines to—we had generators and other equipment that was necessary to remove the coal by cutting machines and that re-
3200 quirement that was brought about in order to maintain the lease from Tennessee Products, you see. A letter went out to all operators in order to do business with TVA it would be necessary to go to mechanized mines. We were trying to fulfill that obligation.

Q. How were these machines operated? What was the method of loading that was being used in this mine at the time you mechanized?

A. You mean after?

Q. After you mechanized?

A. At the time, I mean after—we used, of course, we still use some men in loading of the coal with the cutting machines, separating the coal from the vein into cars.

Q. Any machinery used to load the coal?

A. Yes, we have some loading machinery, too.

Q. How were the coal cars transported from the face of the mine to the mouth of the mine?

A. By motors.

Q. How were these machines operated?

A. Well, we had a motorman, of course, and then we had the track and the motor.

Testimony of Lon Shelton Varnell—Direct

Q. What type of power did you use?

A. Electric power.

Q. At the time you entered on Daus Mountain, were there any electrical power lines up there?

3201 A. No, sir, it became the responsibility of we who did have mines on Daus to work out a contract with the Sequatchie Valley Co-op.

In order to do this, which required quite an investment, but we had faith in TVA and we had faith in the coal that we had in those mines and we felt like that it was a good business proposition for us.

Q. Did you enter into a contract with the electric Co-op?

A. Yes, we did.

Q. Did you enter into it yourself personally?

A. I did, along with other people who had mines leased on Daus Mountain.

Q. What was the total amount of the contract that you entered into?

A. $25,000 was the initial amount.

Q. How did you finance the purchase of your equipment that you put into this mine at the time you mechanized?

A. We secured the equipment from Mr. J. T. Fish in Logan, West Virginia. We made an initial down payment, the rest was to be paid for by Tennessee Products withholding 25 cents per ton on each ton of coal they sold for us that came from the leased mines.

Q. Was this a conditional sales contract?

A. Yes, it was.

* * * * * * * * * *

3202 Q. Who mined the coal at your Mine No. D-217?

A. In the beginning Mr. Barney Johnson, Mr. Hembree Brown started out in the mule mines and when they had received information that it would go to mechanization later on they felt like they were not capable of handling mechanized equipment and they transferred the lease that they had with me to Stanley Yarworth and

Herman Johnson with my approval and with the understanding that I would continue to maintain the same policy of complete supervision of the mine and in complete charge at all times.

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3214 CROSS EXAMINATION

By Mr. Combs:

Q. Mr. Varnell, you ever been a coal miner?

A. Never a coal miner.

Q. Have you ever produced any coal as an operator?

A. Would you define the terminology of "an operator"?

Q. Well, have you ever engaged in the production of coal as such?

A. Well, I would say yes.

Q. Now, you have testified on discovery here, have you not, they have taken your deposition in this case?

A. Yes.

Q. I wonder if you recall making the answer to this question, let me read it to you:

"Question: You obtained a lease, you furnished the lease, that is, you furnished the equipment and then you, in turn, leased that to somebody else, is that right?"

That is the question and then your answer:

"For them to produce coal, that's right, because I am not a coal miner and I don't know anything about producing coal actually, so I leased it to them and worked out an arrangement where they would produce the coal and put it in the hopper."

Is that true?

3215 A. What you have said here is this, you have taken one statement, I furnished them the machinery, yes.

Q. I ask you, Mr. Varnell, whether or not that you ever produced coal?

A. I would have to answer that in the affirmative, yes.

Q. And then your answer to that question then is not accurate?

A. You are taking it out of setting.

Q. I am not taking it out of setting and I read the question and your answer, is that answer correct?

A. I furnished the machinery to produce the coal.

Q. But you didn't produce the coal, did you?

A. No, sir.

Q. And you had no experience in producing coal?

A. I can't follow you, I am sorry.

Q. You want me to read your answer again?

A. No, I know the answer but you are taking it out of setting.

Q. I am not taking it out of setting. I am reading the question and the answer that you answered under oath.

A. Well, excuse me, I don't want to do anything that would interfere with the dignity of the Court.

Q. I don't understand your remark about that.

The Court: Well, state a question.

3216 Q. What is your principal business?

A. That's difficult to answer because my time is fairly well divided but I think primarily I would have to answer that as a coach because that's my profession and has been for 30 years.

Q. What about your Chevrolet Company, do you have a Chevrolet agency?

A. A franchise, yes.

Q. Would you describe to the Court just what kind of agency you have and how big that business is?

A. Well, we do a million to a million five hundred thousand dollars worth of business a year with Varnell Chevrolet Company.

Q. Are you the principal owner of that company?

A. I am.

Q. Let me ask you, Mr. Varnell, do you sell trucks, coal trucks for that company?

A. I sure do.

Q. Did you originally get into the coal business in order to sell trucks?

A. I would like to give you an answer.

Q. I will ask you the question. That is your privilege.

A. Yes, sir, I went into the coal business because I recognized the need of employment for our people in
3217 the Tracy City area and it has been my purpose in life to try to help people in every way I could and I felt like if I could open up coal mines with my capital and give them a chance of employment then I was fulfilling my purpose.

Q. Well, I think that's a wonderful purpose but we asked you the question in your deposition, something like this, that you testified in connection with your ownership and that you had coal trucks and we said, "Chevrolet trucks?" And your answer was this, "Right. This was one reason I went into the mining business because our people up there didn't have the money to go into the mines and equip the mines and they needed work and they were my customers and had been my customers so I wanted, if I could, to give them the opportunity to work, but in helping others sometimes you get hurt yourself and so it seemed like it worked out that way."

In other words, you did go into the business to sell your coal trucks?

A. Well, I was selling the coal trucks if I had never gone into the business.

Q. Yes. That's my point.

A. Right.

Q. But, conversely, you probably wouldn't have gone into the coal business?

A. I felt like I owed it to my customers, yes.

Q. And you wouldn't have probably gone into the
3218 coal business if it hadn't been for the trucks that you were selling?

A. Oh, yes, I would if I felt like it would have helped the people, which it did.

Q. Then what would you have done?

A. I would have went ahead just as I did, even though I weren't selling them the trucks.

Q. Would you give them some money or what?

A. I would have given them, bought the equipment and set the mines up. It took a lot of money to get the mines to performing, have to go in and open up the mines, you have to establish the track and those things.

Q. Now, you obtained a lease from the Tennessee Products for Mine No. 217 on Daus Mountain, is that correct?

A. Yes, sir.

Q. In 1957?

A. Yes, sir.

Q. Now, did you in turn sub-lease that to others?

A. Yes, sir.

Q. To whom did you sub-lease it to?

A. The first one was to Mr. Hembree Brown and Mr. Barney Johnson, as it was a mule mine, and when it was recognized that we would go into mechanical mines their lease was transferred to Stanley Yarworth and Herman Johnson.

Q. What were the terms of your sub-lease, were
3219 they to pay you a stipulated sum or were you to pay them a stipulated sum to put the coal in the hopper?

A. They were to receive a certain sum of money to place the coal in the hopper.

Q. All right. Now, did you furnish the machinery?

A. I did.

Q. What else did you do?

A. I furnished the machinery and equipment, I kept the records, I maintained a solid relationship between Tracy City Coal Company and Tennessee Products and Chemical Corporation.

Q. Did you carry on workmen's compensation on the employees?

A. That was not my responsibility.

Q. Did you have any responsibility with reference to their social security?

A. None whatsoever.

Q. On their withholding tax?

A. None whatsoever.

Q. Was it part of your practice to avoid the responsibility of having to pay the workmen's compensation and the social security?

A. The lease was so drawn up that it would not be my responsibility because I had a tremendous amount of responsibility in many other capacities and you have to
3220 limit your responsibilities.

Q. And that was the purpose of the lease, to avoid that responsibility?

A. I wouldn't say avoid but to prevent overdoing my capacity.

Q. Or to protect you against that, would that be a correct way of putting it?

A. Well, you might, your terminology may be such as it may and you may state as you so find it incorporated to your mind.

Q. Did these people that you sub-leased the mine, did they sign a contract with United Mine Workers?

A. That was not, as I say, that was not my responsibility.

Q. Well, I am asking you, though, whether or not you know of your own knowledge they did?

A. I couldn't answer that question.

Q. You don't know?

A. No, sir.

Q. You don't know whether or not on April 26, 1962, a man by the name of Stanley Yarworth signed a contract for that same mine, the same lease?

A. I am not sure.

Q. Did your lessees have a right to sell their coal wherever they chose to sell it?

3221 A. No, sir.

Q. What were the provisions or limitations with reference to their sales of coal?

A. Well, this D-217 was obligated to sell their coal under a contract that was negotiated between Tennessee Products and TVA.

Q. Well, didn't you have a provision, though, in your lease to your sub-lessees that those sub-lessees had to sell it to you?

A. Their responsibility was to place the coal in the hopper over which I had jurisdiction.

Q. But it was your coal at that time?

A. It became my coal once it was in the hopper.

Q. Yes.

A. Yes, sir, and I paid them.

Q. Right. And then they had to sell it to you under the provisions of the lease?

A. Because I had to turn it over to Tennessee Products.

Q. Right. And then you, in turn, had an obligation to sell to Tennessee Products?

A. Yes, sir, I had an obligation to meet, yes, sir, and I wanted to fulfill my obligation.

Q. Now, did these leases specify the amount that Tennessee Products would pay for the coal?

3222 A. Well, it fluctuated, in other words, the price of coal would fluctuate to a certain extent but we were told what we might expect to receive for the coal, yes, sir.

Q. Did you at one time change your trade name from the Tracy City Coal Company to the Varnell Coal Company in 1962?

A. I could have, I could have, I don't recall, but I could have.

Q. You don't know?

A. Well, I am not sure if I can state it that way.

Q. Did you ever make any payments to the United Mine Workers Welfare Fund?

A. Not to my knowledge.

Q. Did you ever have any conversation with anybody speaking for the Mine Workers or in connection with a contract with you?

A. No, sir.

Q. Do you have another business besides your Chevrolet business?

A. Yes, sir.

Q. What is that business?

A. Well, I have a hardware and appliance business, wholesale discount house, I have a promotion business, I am in the promotion business.

Q. Do you have any other business in the coal
3223 industry?

A. Yes, sir.

Q. What is that?

A. I act as a broker for certain business associates.

Q. A broker?

A. Yes, sir.

Q. Do you operate under a trade name? What is the name of it?

A. Yes, sir.

Q. What is the name?

A. Grundy Coal Company.

Q. Do you sell coal to certain operators on your Grundy Coal Company?

A. To certain operators?

Q. Yes.

A. Not operators, no.

Q. What about George Ramsey, do you sell and buy coal from him?

A. I sell coal for Mr. Ramsey.

Q. You sell it for him?

A. For him, yes, sir, I act as a broker for Mr. Ramsey.

Q. On his account as a broker?
A. Yes, sir.

Q.. In other words, you obtain a contract and then
3224 you purchase the coal and then sell it for them on that contract?
A. Yes, sir.

* * * * * * * * * *

3230 MAX CONDRA,

a plaintiff, called as a witness at the instance of the plaintiffs, having been previously duly sworn, was recalled and testified further as follows:

REDIRECT EXAMINATION

By Mr. Walker:
Q. Mr. Condra, you have testified in this case previously?
A. Yes, sir.
Q. For the record, would you give us your full name?
A. Max Condra.
Q. And where are you employed at this time?
A. Grundy Mining Company.
Q. And what is your position?
A. Superintendent.

* * * * * * * * * *

3235 Q. And what do you estimate to be obtainable or recoverable on your retreat?
A. Well, we have, if we are developing, if we develop and take out 55 per cent, that leaves 45 and then depending upon the areas and the conditions we should take out probably 80 per cent in good areas and less in bad areas.
Q. What is the area that this mine is located in?
A. The Pocket area is considered one of the good areas of the Sewanee seam.

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3274 JOSEPH HOWARD GRAHAM,

a plaintiff, called as a witness at the instance of the

plaintiffs, having been previously duly sworn, was recalled and testified further as follows:

* * * * * * * * * *

3288 RECROSS EXAMINATION

By Mr. Rayson:

* * * * * * * * * *

3298 Q. I am asking you if one of these four mines that you had of the Ninth West Coal Company did not have a severe water problem in December of 1962?

A. Yeah, that 15 mine did that we pumped so long afterwards.

Q. What about 40, No. 79?

A. Well, they wasn't no worse than usual.

3299 Q. Do you recall having testified about this at some prior date, Mr. Graham?

A. Yeah, after Reel's Cove pulled their pumps out of 40.

Q. When did Reel's Cove do that, after they closed their mine?

A. Well, quite a while after they closed their mine.

Q. In 1962, though, wasn't it?

A. I wouldn't say what date it was.

Q. I am going to ask you if you recall testifying before the National Labor Relations Board on June 17, 1964, when you were asked about your Ninth West Coal Company and you were specifically asked this question by Mr. Ables:

"Now, were there one of these entries closed out due to a water condition?"

You said, "Yes, the 79 part of it there next to the water came in there and it filled up.

"Where was the water coming from, Mr. Graham?

"Out of Reel's Cove. When they quit pumping the pumps at Reel's Cove, you see, it let the water in on that. Reel's Cove is that—that's Tennessee Products Corporation, you know, that's the big mines where they get them pumped. they had three or four big pumps in there that they get

water from. When they shut down they pulled those pumps out and shut them down.

3300 "Question: Now, that closed your Entry No. 40. When did it get flooded?

"Well, it took a while, you know, the water run on down there into it after they quit pumping."

Do you remember testifying in that way, Mr. Graham?

A. Yeah, I remember that after they quit pumping, why, the water come in, I don't deny it.

* * * * * * * * * *

3319 GEORGE RAMSEY,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Please state your name, sir.

A. George Ramsey.

Q. Where do you live, Mr. Ramsey?

A. Monteagle, Tennessee.

Q. What is your business or occupation or profession?

A. Coal stripper.

Q. Where do you operate, sir?

A. About four miles out of Tracy City towards Coalmont.

Q. When did you first start into the coal mining business?

A. I think I first started in about 1944.

Q. And where was that, sir?

A. In Pennsylvania.

Q. What type of mining were you doing in Pennsylvania?

A. Underground mining.

3320 Q. How long a period of time did you do underground mining?

A. Oh, about four years, to the best of my memory.

Q. Then what did you do?

A. Well, I decided to go into the stripping business so I bought a shovel and dozer and some more equipment and I stayed in the deep mining business also at the same time up there.

Q. When did you come to the State of Tennessee, sir?

A. January the 1st, 1951.

Q. And how were you operating at that time, sir, under what name?

A. Burnham Coal, Incorporated.

Q. And were you an officer in the corporation?

A. Yes, sir.

Q. Did Burnham Coal, Incorporated, ever sign a National Bituminous Wage Agreement?

A. Yes, sir.

Q. Do you recall when the agreement was signed or any of the facts surrounding the signing of the agreement?

A. To the best of my memory it was in about June of '51.

Q. How many employees did you have at that time, sir, other than the officers of the corporation?

Mr. Combs: Is he talking about signing a contract
3321 in Tennessee?

Mr. Walker: Yes, sir, signing a contract in Tennessee.

A. At that time we had one, possibly two employees, I just don't remember, I know we had one.

Q. Was any of the employees or officers of the corporation members of the United Mine Workers?

A. Yeah, we all were.

Q. Prior to the signing or after the signing of the contract?

A. After signing.

Q. When did you purchase the interest of the other two stockholders in Burnham Coal Corporation?

A. I believe that was in about October of '52.

Q. What was the name that you placed on your individual operations at that time, sir?

A. Ramsey Coal Company.

Q. And has it operated under that name ever since?

A. That's right.

* * * * * * * * * * *

3324 Q. Did you sign any subsequent National Bituminous Wage Agreement as they were amended, Mr. Ramsey?

A. Did I what?

Q. Did you sign any more of the National Bituminous Wage Agreements after 1951 or the amendment to the wage agreement?

A. Yes, sir.

Q. I hand you four papers entitled "National Bituminous Coal Wage Agreement of 1950 as amended September 29, 1952," two of those; "National Bituminous Coal Wage Agreement of 1950 as amended effective September 1, 1955"; "National Bituminous Coal Wage Agreement of 1950 as amended effective October 1, 1956," and ask if you can identify those?

A. Yes, sir.

Mr. Combs: May I see them, please?

We have no objection, although that's a great deal of duplication in these contracts but we have no objection.

The Court: Exhibit 364.

(The agreements referred to above were marked P364 and received in evidence.)

Q. Mr. Ramsey, I ask you if during the year 1955, prior to the signing of the National Bituminous Wage Agreement, if you had any discussion with any District 19

3325 United Mine Workers representative?

A. Yes, sir.

Q. Who was that person, sir?

A. Mr. Gilbert.

Q. And was this the first contract you had signed with Mr. Gilbert?

A. I believe that's right.

* * * * * * * * * *

Q. I will ask you if you signed a second contract during the year 1955?

A. Yeah, as well as I remember there was one signed, a supplement signed in the fall, I believe.

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3327 Q. Did you sign the National Bituminous Wage Agreement of 1956?

A. Yes, sir.

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Q. Did you sign the 1958 amendment to the National Bituminous Wage Agreement?

A. Yes, sir.

* * * * * * * * * *

3329 Q. Did anything unusual occur at your mines in the early part of 1960 in regards to labor problems, Mr. Ramsey?

Mr. Combs: When?

Mr. Walker: 1960.

A. We had a strike on our job, a picket line went up for recognition of another union.

Q. What was that union, sir?

A. Southern Labor Union.

Q. Do you recall when this picket line occurred?

A. I believe that was in May of '60.

3330 Q. What happened after this picket line was placed at your mine?

A. Well, I told the men that we was under contract with the UMW and that I couldn't bargain with them, so I got ahold of Mr. Ables and—

Q. (Interposing) Who is Mr. Ables?

A. He was our attorney.

Q. What occurred then?

A. He notified the NLRB and they come in and had an election.

Q. Do you recall the results of that election?

A. Yeah. The Southern Labor Union got 18 votes, there was one vote non-union and UMW didn't get a vote.

Q. Subsequent to this election did you sign a contract with the Southern Labor Union?

A. After that election was certified.

* * * * * * * * * *

3334 Q. How long did the Southern Labor Union remain at your mines, sir?

A. They was there about 14 or 15 months.

Q. Are you under contract with any union at this time, sir?

A. No, sir.

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3338 Q. And what was the cost of the land on which you are now working?

A. The total cost on that land was about $127,000, I believe.

* * * * * * * * * *

3339 Q. Who is the principal purchaser of coal in the Southeastern coal area, Mr. Ramsey?

A. Tennessee Valley Authority.

Q. Are there any other markets to amount to anything in this area for coal?

A. Well, there's three cement plants and the wind tunnel at Tullahoma is the markets from our area.

Q. Where have you sold most of your coal, Mr. Ramsey, starting with the period in '54 and coming forward?

A. Well, from '54 through '59, I think it all went to TVA, just about all of it, from '59 on I furnished the wind tunnel at Tullahoma and from about '61 on I believe the cement plant at Cowan and different times we went to Richard City, Penn-Dixie.

* * * * * * * * * *

3342 Q. Correct. Did you attempt to get into any other markets within this vicinity during the period of 1959?

A. Yes, sir.

Q. Who did you begin selling coal to?

A. I got a contract with the Navy Fuel Supply, $4.48 a ton on the car.

Q. Was that based on competitive bidding?

A. Yes, sir.

Q. And when was this obtained, Mr. Ramsey?

3343 A. In 1959, them contracts started about on—about always in June.

Q. And what transportation would be deducted from this $4.48?

A. Well, the same 40 cents, coal is worth about 40 cents more a ton on that order than it was anywhere else.

Q. Where was this contract obtained, Mr. Ramsey?

A. Where was it obtained?

Q. Yes, sir.

A. We bid it out of Washington, U. S. Navy Fuel Supply.

Q. Where was the destination of the coal under this contract?

A. To the wind tunnel in Tullahoma.

Q. Did you bid on any other Navy contracts following the year 1960?

A. On Navy contracts?

Q. Yes, sir.

A. Yes, sir, I bid on them every year.

Q. On this Navy contract you were speaking of that you obtained in '59, what was your tonnage on that, Mr. Ramsey?

A. Twenty-five thousand five hundred and 1.15.

Q. Did you obtain any contracts in the year 1960 for the delivery to the wind tunnel at Tullahoma?

3344 A. Yes, sir.

Q. Would you give us the price per ton and the number of tons that you received on that contract, sir?

A. Well, we got two contracts in 1960, one of them was

for $6.63 a ton delivered and another one was for $6.68 a ton delivered, total tonnage 17,473.51.

Q. What was the transportation expense that was incurred on each of these two contracts, Mr. Ramsey?

A. On them two contracts I paid $1.75 haul bill.

Q. Afterwards did you obtain any other Navy contracts in the year of '61 or the year of '62 or the year of '63?

A. Yes, sir. I had spot bids of TVA.

Q. Did you have any Navy contracts during this period of time, sir?

A. In '61?

Q. Yes.

A. Yes, sir.

Q. And what was the price per ton you received on each of the contracts and the tonnage that was delivered on each contract?

A. Do you mean the gross total sales or the price per ton?

Q. The price per ton and the tonnage delivered.

A. In 1961 there was 24,000 ton, $6.68, and this
3345 was a supplement contract that year for 9,050 ton .65 of $6.10 a ton, 24,900 ton in '63, $6.30 a ton, 1964 we had 31,285 ton at $6.20 a ton, that's delivered prices.

Q. And what was the transportation charge on each of these contracts?

A. Well, they varied, we have paid as much as $1.75 down to a dollar and a quarter on hauling that coal.

Q. Did you have any trucks or other hauling equipment during this period of time, Mr. Ramsey, were you hauling any coal during this period of time?

A. Yes, sir.

Q. Were you hauling your own coal?

A. Most of the time, yes.

Q. Did you sell coal to any other markets other than the Navy contract to Tullohoma and the wind tunnel and TVA during the period of 1960 through 1964?

A. Yes, sir, '61 through today we are furnishing most of the coal going to the Marquette Cement.

Q. And what is the price per ton that you receive for your coal going to Marquette?

A. $5.10, I believe.

Q. Is that F.O.B. at the mine?

A. No, that's the delivered price.

Q. And what is your delivery cost on that?

A. Oh, when we hire it hauled we pay 95 cents;
3346 we have our own hauling equipment.

Q. Do you have any contracts or have you sought any other contracts with any other user of coal?

A. Have I?

Q. Have you sought contracts with anyone else other than Cowan Cement Plant, the Navy contract and the TVA during the period of 1960 to 1964?

A. Yes, I had a contract with Penn-Dixie at Richard City.

Q. What did you receive per ton for the coal delivered to Penn-Dixie?

A. $5.40 a ton.

Q. What was your transportation charge per ton?

A. A dollar and 15 cents.

Q. Do you have any other markets that you have sold coal on during the period 1957 through 1964 that we have not covered?

A. Yes, we had a screening plant that we have screened coal and run domestic a little.

Q. What price per ton do you receive for the domestic coal?

A. We get anywhere from five to $6.50 at the mine, depends on the grade and the size.

Q. Is there any—

Mr. Rayson: (Interposing) At the mine?
3347 The Court: At the mine.

Q. Is there any transportation charge involved on the domestic coal, Mr. Ramsey?

A. Yes, sir, there's 40 cents truck haul to get it to the preparation plant.

* * * * * * * * * *

3350 Q. On this year what market were you principally selling on?

A. TVA.

Q. Spot or term market, Mr. Ramsey?

A. I was on spot.

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3355 CROSS EXAMINATION

By Mr. Combs:

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Q. Now, as we get it, the damage period that we have been advised by your counsel is 1957, 1958, 1959, 1960, 1961 and 1962.

Now, I will ask you during that period of time how many work stoppages did you have at your mine?

A. What year did you start on?

3356 Q. 1957.

A. The only work stoppages that I can recall is when they had the labor, NLRB election up there.

Q. Was that in June of 1960?

A. Sixty, yes.

Q. Who caused that work stoppage at that time?

A. Who caused it?

Q. Yes.

A. Well, the men were tired of being stopped, we had a lot of stops, I had to stop but I kept my men working. They wouldn't allow us to move any coal and I would keep our men working and they knew it wasn't good for me and—

Q. (Interposing) Now, didn't you testify, so I can get to the point, didn't you testify that this June strike of 1960 was induced and caused by the Southern Labor Union?

A. No.

Q. You didn't testify to that in your deposition?

A. It was caused by the Southern Labor Union?

Q. Yes.

A. They struck for recognition.

Q. The Southern Labor Union did?

A. My men struck for recognition for the Southern Labor Union.

Q. Yes?

3357 A. Yes.

Q. In other words, the problem was the Southern Labor Union's attempt to get recognition from you and the men struck because the Southern Labor Union was doing that?

A. That's right.

Q. Now, did you have any other work stoppage after 1960?

A. After 1960?

Q. Yes.

A. Not that I can recall right now.

Q. Now, since 1960, Mr. Ramsey, has your mine ever been down because of lack of orders?

A. No, sir.

Q. And has that operated more or less at full capacity?

A. Not all of the time.

Q. Well, now, how many days a week do you work over there?

A. Well, sometimes the main stripper, it generally works around the clock seven days a week.

Q. Three shifts?

A. Three shifts.

Q. Three shifts?

A. Yes, but lately for the last year or so we have been down to five days a week, we are working five days

3358 a week now.

Q. Yes. Three?

A. Three shifts.

Q. I am talking about since 1960, haven't you pretty

well operated to the capacity of your equipment since 1960?

A. Yeah, we would slow down once in a while, we would feel like we wanted some short weeks or something, but we worked pretty regular.

Q. And you would have an occasional Sunday off and that was about all?

A. Yes.

Q. Now, since 1957 has it been true, with the exception of the strike you were just telling me about, has that been true?

A. Yes, we have managed to try to keep the men working.

* * * * * * * * * *

3359 Q. Now, you testified that you had signed con-
tracts, I believe, since 1952 through 1958, United Mine
3360 Workers contracts, Bituminous Coal Wage Agree-
ment. During that period of time did you increase the wages of your employees as specified by the contract?

A. I never had a contract telling me what to pay as to wages.

Q. Haven't you testified before, Mr. Ramsey, that you never raised the wages as a result of the contracts, is that true?

A. I never raised them. We stayed the same wage range with what the rest of the field was in.

Q. And that was without reference to the contract?

A. We had never had a contract.

Q. Well, you just testified you signed them from 1952 through 1958.

A. We signed them sheets of paper. Can you show me where it tells me on there what to pay a shovel operator?

Q. Well, I think that you will find the contract provides, and I am not going to take the time to get it, that there was an across the board increase from 1952 through 1958, your own exhibit.

A. You have got to have a base rate to go by and it isn't there.

Q. Well, you had a base rate and you could get it, could you not? Are you just telling me now that just because you didn't know how much to pay a shovel operator
3361 that you did not increase wages, you just go ahead and sign the contracts and nothing happened and you didn't pay anything else?

A. We didn't increase wages with what the contracts called for because we never had any contracts. We signed those contracts to more or less satisfy the men to work in peace without violence and stuff, that's the reason those contracts were signed.

Q. All right. Let me ask you this now: In 1961 the Southern Labor Union petitioned for an election or had you petitioned, you petitioned for the election, didn't you?

A. Mr. Ables did.

Q. You signed the petition, he was your counsel but you signed the petition?

A. Well, if I had to I did.

Q. And they held an election?

A. Yes.

Q. And the Southern Labor Union was certified by the Labor Board as the bargaining agent for the employees?

A. Yes.

Q. You signed a year's contract then. What did that contract provide with reference to an increase in wages?

A. That contract provided for the wages that we were paying plus $200 a year vacation pay.

Q. So there was no increase in wages as a result
3362 of your 1960 contract, is that correct?

A. No.

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3364 Q. Mr. Ramsey, did there come a time when you quit selling to TVA?

A. Yes, sir, we don't sell them any coal now.

Q. Do you recall when you stopped selling coal to TVA?

A. I believe it was September a year ago.

Q. 1964?

A. That's right.

Q. Now, then who did you start selling coal to?

A. Well, we have just--we are going to Tullahoma and to the cement plants and we were slowing our operation down. With that cheap price to TVA, why, we don't care too much about that business.

Q. Is that what, Tullahoma?

A. The wind tunnel.

Q. Is that the Navy?

A. Yes.

3365 Q. How much did you get a ton from the Tullahoma coal?

A. Well, it has varied from $5.90 to $6.68.

Q. Is that a substantial increase over what you were getting out of TVA?

A. Yes, sir.

Q. Did you have a freight advantage in your coal to Tullahoma?

A. Yes, sir.

Q. How much of an advantage?

A. I just don't know offhand, I think the rail rate in there is about $2.22 a ton and I believe they have reduced that down to $1.85 but we can truck our own coal in there for about $1.15 a ton.

Q. So it would be the difference between $1.15 and two what?

A. $1.85, we got about a 70-cent differential.

Q. Advantage over your coal?

A. That's right.

Q. So since 1964 your business has been with Tullahoma, the Navy plant, and at a substantial increase in price at an advantage in freight rates?

A. Yes.

Q. Now, what about the cement plant?

A. Well, we have put coal there for—it's the same
3366 price, what I mean there hasn't been no fluctuation of price there and it is about a 95-cent haul bill.

Q. I am not familiar with that territory but is this cement plant—do you have the same freight advantage?

A. No, it is about the same freight rate on the railroad. I think it is 95 cents on the railroad, I think we are paying the same as if we shipped it by rail.

Q. Mr. Ramsey, we think it is rather important on this Walsh-Healey thing and I want to refresh your memory a little on that, if you don't mind.

I asked you the question a while ago if you recalled what you were paying your employees prior to Walsh Healey and how much an increase and I think you said you didn't recall at this time.

A. On the first increase, if I mind, it was probably a quarter and that, if I mind right, was back in '55.

Q. Let me read these few lines, I think it will shorten this if counsel doesn't object. The question addressed to you, Mr. Ramsey, in your deposition was this:

"Would you describe your wage rates generally from 1953 on up to the present time? Let's take prior to the effective date of the Walsh-Healey minimum wage in 1955, prior to 1955."

Your answer, "Prior to the effective date of the minimum wage?

3367 "The $2.01 minimum wage, did you have employees that you were paying less than $2.01?"

And your answer, "At this time I think my labor was about a dollar 75 cents."

And then the question, "Were your other employees being paid more than $2.01?"

And your answer was, "Yes."

And the question, "So the only effect that you was to raise your labor from $1.75 to $2.01?"

Your answer is, "Yes."

And question, "All right. What about the time the minimum wage went up to $2.50 which you were talking about there?"

A. Well, that would be a 50 cents increase.

Q. That's right, in 1958. Your answer was this, "There is a bid there that I put in at this time, that's when the wages went from $2.50 to $2.51." It should be $2.01 to $2.51, "and I put a bid and tried to raise the price of coal a dime and the price dropped about 40 cents, I think, and I didn't get no contract and I had to go fall back on spot business for 60 and 70 cents a ton and we just barely took enough to keep the men working and tried to hold my organization together."

A. (Witness moves head up and down.)

Q. And the question, "Well, my question was this:
3368 Did you have to raise wages by reason of that advance in the minimum wage?"

And your answer was, "Yes."

And the question, "Of all of your employees?"

Your answer, "All except our operators."

I suppose you are talking about shovel operators?

A. Shovel operators and dragline.

Q. "And were they being paid more than $2.51?"

And your answer is, "Yes, sir, they were being paid, at that time they were being paid about two dollars and a half and when we put the other men up to $2.50 we raised them up to the $2.75."

And then the question, "Have you had any wage increases since the last minimum wage increase?"

And your answer is, "No."

"In other words, you were still paying the minimum wage for your labor and the $2.75 for the others?"

The answer is, "Yes, $2.75 for the others."

Does that refresh your recollection?

A. I think that's exactly what I told you.

Q. You will agree that that is correct now?

A. Yes, that is correct.

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3373 Mr. Combs: I might point out, if counsel would permit, that this is signed by Rex Lauck, an assistant editor, assistant acting editor of the Journal.

Mr. Rowntree: On the editorial page, your Honor.

Mr. Combs: Of course, we assume that it is offered for the truth of the contents that is in there, Counsel.

Mr. Rowntree: We are offering it for the claims of the UMWA with respect to these men working for the UMWA and the efforts to obtain recognition and for obtaining of contracts in the Southeastern Tennessee field.

Mr. Combs: The article doesn't say that.

Mr. Rowntree: Well, the language speaks for itself.

Mr. Combs: That's right.

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3374 Mr. Rayson: May it please the Court, we have a number of motions that we would like to make.

Our first is directed to the Plaintiff Walden Ridge Coal Company, the Defendant United Mine Workers of America moves for judgment at the close of the plaintiffs' evidence on the ground that there is no evidence upon which a judgment against the defendant may be entered.

Now, your Honor, speaking to that motion, the Court will recall that there has been no testimony in this case on behalf of the Walden Ridge Coal Company. None of the three partners has appeared to testify on either questions of liability or on questions of damages, therefore, we believe it clear that no judgment could be entered on behalf of Walden Ridge Coal Company and that judgment on behalf of the defendant with respect to that plaintiff's claim should now be granted.

3375 In speaking with the plaintiff's counsel, I don't know whether they intend to seriously resist that motion or not. However, it is our earnest insistence that that motion be granted at this time.

Would the Court want to hear from the plaintiffs on that motion before we proceed?

The Court: Well, perhaps.

Mr. Rowntree: If your Honor please, with respect to Walden Ridge Coal Company, and that company alone, we would have to acknowledge that for some reason they have not come to trial, we would have to acknowledge that we have been unable to get information from them to meet the requirements of discovery with respect to questions asked by the defendant bearing upon that coal company. We have received no requests from them that they be withdrawn from the case. We are not advised at the moment of whether or not damage with respect to this company could be shown on the existing records, and that is about all I can say.

The Court: All right. Well, I believe that motion should be allowed.

Mr. Rayson: The Defendant United Mine Workers' next move to dismiss this action insofar as it pertains to the claim of the Plaintiff George Ramsey on the ground that there is no evidence upon which the claim of this plaintiff could be entered or could be reduced to judgment for
3376 the plaintiff.

Speaking to that motion, your Honor, we believe the record shows that as to this plaintiff there was no interference whatsoever during the damage period. We understand that the damage period is from 1957 through 1962 as claimed by the plaintiff.

During this period there was no work stoppage at the mine of George Ramsey except one, which by his own statement was not the responsibility of the defendants. There was no other act of interference which this evidence shows. The only other act of interference, as we understand the plaintiff's claim, would be with respect to the TVA market.

It is true that this plaintiff stated that this market was low in 1958. We do not believe that that in any way suffices

to show, either through his testimony or through any of the other evidence introduced in this case, that the TVA market condition was the result of a conspiracy or that it was the result of a conspiracy in which the Defendants United Mine Workers participated.

We, therefore, urge the Court to enter judgment with respect to George Ramsey at this time. Obviously there could be no claim on the part of Ramsey, as we see it, from and after 1960. He was not a party to a union agreement after that date and for this added reason we believe
3377 that judgment should be entered for the defendant with respect to his claim at this time.

Again I don't know whether the Court would want to hear from the plaintiffs.

The Court: Let's hear from the plaintiffs.

Mr. Rowntree: May it please the Court, we believe that Mr. Ramsey's case is a strong case. Mr. Ramsey was affected like all of the other coal producers in the Southern Tennessee area and the Whitwell-Palmer area, particularly in the years '57 through '60, which were the critical years immediately prior to the bringing of this lawsuit.

These questions go to the merits of the case with respect to other plaintiffs, so far as the efforts to enforce—to force upon and to enforce the National Bituminous Coal Wage Agreement on this field.

Mr. Ramsey was compelled to sign the National Bituminous Coal Wage Agreement for a number of years until by force of arms he was able to protect his operation and get out from under the yoke that was conspiratorially put upon this coal field.

The Court: Well, insofar as your position with regard to Mr. Ramsey depends upon the same conspiracy that you alleged with regard to all of the other defendants. You may reserve your argument upon that until an appro-
3378 priate place to make the argument.

Very well. I will reserve any action on that at this time.

Mr. Rayson: Your Honor, the Defendant United Mine Workers wishes at this time to renew the motions which were made prior to the pre-trial conference and on which the Court took action reflected in the pre-trial order.

These motions related to several of the plaintiffs and including the Plaintiff Gibbs, where it was contended that the judgment in the case of Gibbs against the United Mine Workers was res judicata and other plaintiffs who were involved in the Welfare Fund litigation and had third-party actions against the United Mine Workers of America dismissed with prejudice.

I refer to those motions, which are on file, for the identification of those plaintiffs. We renew those motions and other motions made to dismiss prior to the pre-trial conference and with respect to which the Court's action is shown in the pre-trial order.

The Court: All right. Suppose you proceed on with your motions.

Mr. Rayson: Mr. Combs will make the remainder of our motions.

Mr. Combs: If the Court please, we have a series of three separate motions. I would like to make them
3379 and then argue them all together. I think that they flow better in that way.

First, we move the Court to strike the evidence concerning coal sales to the Tennessee Valley Authority and other markets. The Defendant United Mine Workers of America moves the Court to strike all evidence relating to alleged predatory pricing, dumping or other restrictive marketing practices of coal on the Tennessee Valley Authority or other markets by alleged co-conspirators, for the reason that there is no clear proof, as required by Section 6 of the Norris-LaGuardia Act, that the United Mine Workers

actually participated in, or actually authorized, or ratified after knowledge thereof, any alleged predatory pricing, dumping or other restrictive marketing practices among alleged co-conspirator coal operators in the sale of coal to the Tennessee Valley Authority or other markets, and further there is no material or substantial, competent evidence that such practices existed.

The defendant further moves the Court to strike the evidence, to strike all of the evidence of activities engaged in by (1) unknown persons, (2) identified outsiders, (3) union members, and (4) local union officers, because such individuals are not shown to be agents of the defendant acting in that capacity, and the absence of an agency relationship precludes attributing such activities to de-
3380 fendant by the "clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof," required by Section 6 of the Norris-LaGuardia Act.

The United Mine Workers further moves to strike all evidence relating to the mere presence of District 19, United Mine Workers, representatives and representatives of the defendant in connection with the foregoing activities, for the reason that mere presence of such representatives, without more, is not clear proof that Defendant United Mine Workers actually participated in, or actually authorized, or ratified after knowledge of, any such activities.

The defendant further moves the Court to dismiss the action herein pursuant to Rule 41 (b) Federal Rules of Civil Procedure, as to all of the plaintiffs and each of them on the ground that upon the facts and the law, plaintiffs, and each of them, have shown no right to relief because:

1. There is no clear proof, as required by Section 6 of the Norris-LaGuardia Act, that Defendant United Mine Workers actually participated in, or actually authorized, or ratified after knowledge thereof, an agreement between

said defendant and coal operators that the terms of a collective bargaining agreement between them should or would be imposed by said defendant upon other coal
3381 operators in other bargaining units.

2. There is no clear proof, as required by Section 6 of the Norris-LaGuardia Act, that Defendant United Mine Workers actually participated in, or actually authorized or ratified after knowledge thereof, an agreement between Defendant United Mine Workers and coal operators that the terms of a collective bargaining agreement between them should or would be imposed by said defendant upon other coal operators in other bargaining units for the purpose of eliminating such other operators from the bituminous coal industry.

3. (a) There is no clear proof, as required by Section 6 of the Norris-LaGuardia Act, and no material or substantial, competent evidence showing that United Mine Workers actually participated in, or actually authorized, or ratified after knowledge thereof, any alleged predatory pricing, dumping or restrictive marketing practices of coal operators in the sale of coal to the Tennessee Valley Authority or any other market; and there is no material or substantial, competent evidence showing that any alleged predatory pricing, dumping or other restrictive marketing practices in relation to such sales existed.

4. There is no clear proof as aforesaid and no material or substantial, competent evidence that Defendant United Mine Workers joined in or was a party to any con-
3382 spiracy as alleged in the complaint, or that plaintiffs, or either or any of them, have suffered any damage or injury directly or proximately as a result of any such alleged wrongful conduct on the part of the United Mine Workers.

5. Plaintiffs, and each of them, have failed to establish by such proof as aforesaid, prima facie, that the United

Mine Workers entered into any contract, combination or conspiracy, or engaged in any combination or conspiracy, in restraint of international trade or commerce in violation of the Sherman Act and particularly Section 1 thereof.

6. Plaintiff, and each of them, have failed to establish by such proof as aforesaid, prima facie, that the United Mine Workers monopolized, or attempted to monopolize, or combined or conspired with any of the alleged co-conspirators, one or more, to monopolize or attempt to monopolize any part of interstate trade or commerce in violation of the Sherman Act and particularly Section 2 thereof.

7. Plaintiffs, and each of them, have failed to establish by such proof as aforesaid, prima facie, that there has been by United Mine Workers any unreasonable restraint of interstate trade or commerce, or any control, attempted or consummated, of an unreasonable part of interstate commerce in violation of the Sherman Act.

3383 8. Plaintiffs, and each of them, have failed to establish by such proof as aforesaid, prima facie, that United Mine Workers has forfeited its exemption from the liability under the Sherman Antitrust Act pursuant to Section 20 of the Clayton Act and Section 4 of the Norris-LaGuardia Act.

9. Plaintiffs, and each of them, have failed to establish by any evidence or substantial, competent evidence that they, or any of them, have been injured or damaged directly and proximately in their respective businesses or properties by reason of any United Mine Workers' conduct allegedly in violation of Sections 1 and 2 of the Sherman Act. Moreover, proof of any alleged damages as to each of the plaintiffs is both speculative and remote.

In support of our motions that I have just read, I would like to call to the attention of the Court a report of the House Committee on the Judiciary, this was quoted with approval in Balian Ice Cream Company against Arden

Farms, a District Court of California case, 1952, 104 Fed. Sup. and affirmed in the Ninth Circuit at 231 Fed. (2d) 356, certiorari denied 350 U.S. 991, and I think is descriptive of our position, which states:

"In any competitive economy we cannot avoid injury to some of the competitors. The law does not, and under the free enterprise system it cannot, guarantee business
3384 men against loss. That business men lose money or even go bankrupt does not necessarily mean that competition has been injured. We cannot guarantee competitors against all injury. This can only be accomplished by prohibiting competition."

Now, first we go to the question, your Honor, of clear proof. Our argument on clear proof is that Norris-LaGuardia's Section 6 commands that union guilt and responsibility be shown by clear proof. United Brotherhood of Carpenters vs. U. S., 330 U.S. 395. Similarly in UMW vs. Pennington 14 law edition (2d) 626-633, declares that it must be "clearly shown" that a union "has agreed with one set of employers to impose a certain wage scale on other bargaining units for the purpose of eliminating competitors."

In the case of Delaware Valley Marine Supply Company vs. American Tobacco Company, in the Third Circuit, 297 Fed. (2d) 199, this was a 1961 case, as here, plaintiff offered no direct proof of conspiracy. The Third Circuit declared, "That it is the fact that conspiracy remains an essential element of a 'Sherman case.' Though verdicts premised upon circumstantial evidence in antitrust cases have been sustained, 'to sustain a finding of fact that circumstances proven must lead . . . with reasonable certainty and must be of such probative force as to create the basis for a legal inference and not mere suspicion.' "

Wesson vs. U. S., Eighth Circuit, 172 Fed. (2d) 931,
3385 and accord Pevely Dairy Company vs. U. S., Eighth

Circuit, 178 Fed. (2d), 363, and so, too, in U. S. vs. Morgan, District Court in New York, Judge Madina, 118 Fed. Sup. 621, in which Judge Medina cogently remarked, and I think that fits this case exactly, and I quote from Judge Medina's decision in that case, "Either there is some agreement, combination or conspiracy or there is not, and the answer must be found in evidence adduced and not in some crystal ball or vaguely sensed by some process of intuition, based upon a chance phrase used here or there."

The Sixth Circuit has declared that substantial evidence excludes "vague, uncertain or irrelevant matter" and implies "a quality of proof which induces conviction and makes an impression on reason." As in NLRB vs. Thompson Products, Inc., Sixth Circuit, 97 Fed. (2d) 13.

In the case of Cold Metal Process Company against McLouth Steel Corporation in the Sixth Circuit, 126 Fed. (2d) 185, the Sixth Circuit stated, and I quote, "An inference is but a reasonable deduction and conclusion from proven facts."

In a Sherman case the Eighth Circuit in Pevely Dairy Company vs. United States, Eighth Circuit, 178 Fed. (2d), 363, the Court states, and I quote, "In Wesson vs. United States, Eighth Circuit, 172 Fed. (2d) 931, in reversing a conviction based upon circumstantial evidence, we said.

'Inferences must be based upon proved facts or facts
3386 of which judicial notice must be taken and one inference cannot be based upon another inference. To sustain a finding of fact the circumstances proven must lend to the conclusion with reasonable certainty and must be of such probative force as to create the basis for a legal inference and not mere suspicion. Circumstantial evidence, even in a civil case, is not sufficient to establish a conclusion where the circumstances are merely consistent with such conclusion or where they give equal support to inconsistent conclusions.' "

Triers of fact are not permitted to raise suspicion to the status of fact or to base inferences upon mere speculation. In the case of Troutman vs. Mutual Life Insurance Company of New York, a Sixth Circuit case, 125 Fed. (2d), 769, this Court's words are that a fact finder "is not permitted to speculate upon its verdict" and "suspicion or conjecture is insufficient to constitute evidence for proper submission of a case to the jury."

The Sixth Circuit has also said that to submit to a fact finder "a choice of probabilities is but to permit them to conjecture or guess, and where the evidence presents no more than such a choice, it is not substantial."

The United States Supreme Court has also said that "speculation cannot supply the place of proof" in Moore vs. C & O Railway Company, 340 U.S. 573, and that "mere speculation be not allowed to do duty for probative
3387 facts," Tennant vs. Peoria and Pekin Union Railroad Company, 321 U.S. 29, 32.

The instant case here lends itself precisely to the statement made in G and P Amusement Company vs. Regent Theatre Company, District Court for the Northern District of Ohio, in 1952, 107 Fed. Sup. at Page 453, the Court declared that, "The claimed existence of a conspiracy herein is to be found in constant assertion by plaintiffs and their counsel rather than in the proof."

Now, to get down more particularly to the defendants here, if the Court please, I would like to read briefly from a case decided by the Sixth Circuit known as the Garmeada Coal Company plaintiff against United Mine Workers of America. This is an appendix to Judge Church Ford's memorandum opinion, which was sustained by the Sixth Circuit in the findings of facts and conclusions with reference to the constitutional liabilities of the union for its local constituent members and this had to do with the United Mine Workers.

The Court found additional findings and conclusion, among which he said, "First, the strike involved in this case was called by Jake Adams, President of Local No. 6130. Local Union No. 6130 in calling the strike by its president did not act and was not authorized to act as an agent for the International Union of United Mine Workers of America
3388 or District 19 thereof and had no authority whatever from the International Union or District 19 to call the strike or participate therein.

"3. The local union as such did not sign any of the contracts alleged to have been violated and as such was not a party thereto.

"4. Local union as such had no part in the negotiations leading up to or in the consummation of the bargaining agreement herein alleged to have been breached.

"5. The International Union of the United Mine Workers of America and Local Union No. 6130 of the United Mine Workers of America in District 19 thereof did not together constitute a single entity and did not bear such relation to each other that the acts of the local were the acts of all three of them and the act of the local by engaging in the strike herein in question was not the act of the Defendants International Union or District 19 of the United Mine Workers of America.

"Conclusions of law:

"First, the relationship existing between the International Union and the local were somewhat analogous to the relationship of the parent corporation to a subsidiary, but considered as a whole the relationship of the union and the local is sui generis and simply will not fit into any of the traditional legal pigeonholes. Citing Association of
3389 Westinghouse Salaried Employees against Westinghouse Electric Corporation, 210 Fed. (2d) 623, the Third Circuit. 'Such relationship is not sufficient to render the International Union liable for unauthorized acts of the

local. Under the constitution of the International or the local is in many respects an autonomous entity without prior authority to act for or by the International in respect to calling or promoting a strike in violation of the bargaining agreement entered into by the International.'

"3. The local not having been a party to the bargaining agreement alleged to have been violated herein and not liable for breach of such contract nor for any damages arising therefrom. H. Church Ford, Judge."

That was on precisely the same constitution that is in this record here and I might say that the Constitution of the Mine Workers is in this record through the deposition of Mr. Albert Pass, counsel introduced it and I'd like to go into some brief detail in connection with that on the liability of the International for the acts of the District and sub-districts.

The United Mine Workers Constitution divides itself into district and sub-districts, which in turn are composed of locals that alone have the right to admit to membership. The supreme authority of the International organization resides primarily in the International Convention but during its recess the International Executive Board
3390 is the governing body in all judicial and executive matters.

Article XVI of the United Mine Workers Constitution, provides that no district shall be permitted to engage in a strike involving all or a major portion of its members, "without the sanction of an International Convention or the International Executive Board."

Section 2 of Article XVI authorizes districts to order "local strikes within their respective districts on their own responsibility, but where local strikes are to be financed by the International Union, they must be sanctioned by the International Executive Board."

The constitution does not authorize local unions to call

a strike. In the case of Coronado Coal Company against the United Mine Workers, 259 U.S. 344, the Supreme Court made clear that just because an affiliate was doing the work of the International did not make the affiliate an agent.

Of constitutional provisions identical with those in the instant case in relation to strike action, the Court held at 259 U.S. 393, "The strike was a local strike, by Article XVI of the International Constitution (UMW) could not thus engage in a strike if it involved all or a major part of its district members without sanction of the International Board. There is nothing to show that the Interna-
3391 national Board ever authorized it, took any part in preparation for it or in its maintenance. Nor did they or their organization ratify it by paying any of the expenses. It came exactly within the definition of a local strike in the constitutions of both the National and District organizations."

Reaffirmance of that test of union responsibility came in the second Coronado case, 268 U. S. 295, where the Court said, and I quote, "But certainly it must be clearly shown in order to oppose such a liability on an association of 450,000 men that what was done by their agents in accordance with the fundamental agreement of association."

In the case of United Construction Workers against Haislip Baking Company, Fourth Circuit, at 223 Fed. (2d) 872, in 1955, the Fourth Circuit had this to say in connection with wildcat strikes, and I think Judge Parker wrote this opinion, "We have never held, however, that there is any responsibility on the part of the union for a strike with which it had nothing to do and there manifestly is no such liability."

Of the union's field representatives' obligation to have the men return to work, the Court remarked at 223 Fed. (2d) 877, "If Morris (Regional Director) and Beleher (Field Representative) had done nothing when plaintiff

called on them to help get the men back to work, there would have been no liability on the part of the defendant."

3392 The Court then concluded in this same case at Page 877, "This being true, defendants were not rendered liable by the efforts which these men made to bring about an adjustment of the difficulty, even if they did not do everything that they might have done to that end."

Also in International Garment Workers Union against NLRB, 99 Appeals DC 64, 237 Fed. (2d) at 545, where it is said that a union is "under no obligation to disavow" strike conduct which it did not initiate and with which it is not "shown to have been connected, directly or indirectly."

Also in the case of American-Hawaiian Steamship Company against Sailors Union of the Pacific, a case in Northern District of California, 37 Fed. Sup. 828, wherein a dispute on a "no strike" clause and a contractural obligation "to furnish capable, competent and satisfactory employees", the District Court absolved the union of liability resultant upon a strike because, "respondent cannot compel men to work; it can only try to persuade them to take such work. If respondent does this it has complied with its contract obligations."

And I think that that case is really apropos, the wording of it, to this case here.

In the Garmeada Coal Company case that I just mentioned against the International Union that I just mentioned above, the District Court, with the Sixth Cir-

3393 cuit's approbation at 230 Fed. (2d) 945 declared that a local union, in calling a strike by its president, did not act and was not authorized to act as an agent for either the International Union or for one of its constituent districts and had no authority to call the strike or participate therein.

In the Garmeada case the District Court refused to hold a district liable for a local work stoppage, although the

opinion recites at 122 Fed. Sup. 518 that the district representative "met with the officers of the company and vigorously argued that in fairness to the men the company should not change its practice."

The Court: Let me see, Mr. Combs, if I understand your position.

Mr. Combs: All right.

The Court: Your argument at this point is that the International would not be liable for any strikes called by the local unless or until it was approved by the International?

Mr. Combs: Yes.

The Court: Now, just how is that, in your opinion, relevant in this case?

Mr. Combs: It is relevant to the second motion that I made in connection with local union officials' activities and that is replete in this case.

The Court: All right. Well, in this case is there
3394 or not any evidence of any work stoppage for which, in your opinion, the International would be responsible?

Mr. Combs: No, there is not.

The Court: Is it your opinion that in the evidence in this case there is no evidence of any work stoppage for which the International would be responsible?

Mr. Combs: That is correct. I think the evidence has indicated that these strikes and stoppages, all of them occurred by reason of local disputes over local conditions, local circumstances, and I might say this to the Court, that in connection with the failure of the men to work from 1962, I think it is December the 26th, 1962, that the men, among which these plaintiffs are involved, have not worked but we say to the Court that that is not a strike at all because there hasn't been a contract between the union and the company since December of 1962, it has been an effort to get a contract and the men have not worked in the absence

of a contract from these companies to work and so there has been no strike called and there is no allegation in here that the International Union called a strike.

The Court: Well, can there be no strike except when a contract is in existence?

Mr. Combs: I suppose there certainly could for recognition or for other matters that deal with local problems and all but my point is that there is certainly nothing in
3395 this record under the constitution of the union or any evidence whatsoever that the defendant, and remember it is only the International Union, United Mine Workers that is a defendant in this case, and there is certainly no evidence offered by the plaintiffs anywhere that they have engaged in any work stoppage.

The Court: Well, now, let's see what the Court must try to determine in this case with reference to a work stoppage, and again I assume, first the Court must try to determine whether or not the work stoppage was in any way the responsibility of the International, is that correct?

Mr. Combs: That is correct.

The Court: Then if the Court should determine that it was not a responsibility of the International, of course, that work stoppage would not be relevant to any issue in this lawsuit, is that correct?

Mr. Combs: That is correct.

The Court: If the Court should determine that that work stoppage was either ratified by or supported by or sponsored by the International then the Court would go further and determine whether or not that is part of some conspiracy to interfere with Interstate Commerce, is that correct?

Mr. Combs: That is exactly right, whether or not it would be an overt act that was the result of a conspiracy, and I might say this, your Honor, in connection with
3396 that, and with your Honor's observation there, that

this has been a rather unusual situation and in order to put this in proper perspective that we should get back to what the basic allegation of what this lawsuit is, that is, that in 1950, contemporaneously with negotiation of that contract that there was an express agreement. Now, plaintiffs have rode that word, it's not our word, they have rode that word continuously in their complaint and through this, and all through that there was an express agreement between the union and these alleged co-conspirators aside from the 1950 contract that they would monopolize the coal industries, the operators would, and that the union would help them to do that. Now, that is their allegation.

Now, all of the evidence that has been submitted in here to date that I know of has to do with a local situation in which, if I can follow plaintiffs' counsel, runs along this line:

That we have got a big conspiracy going and it has been going since 1950 by an express agreement of these co-conspirators and that there is merely a prong of the big conspiracy that is continuing as of the date that this lawsuit was filed.

Now, they have offered no evidence to that and we say that to argue all of these circumstances here of whether the union is liable for any work stoppages when it
3397 ratified them or participated in them, the stoppages, and I don't think anybody can say the difference between a strike and a stoppage has not been adhered to here, I don't know that they are calling a strike or just a stoppage or what they are calling it, but I think it is completely immaterial to this lawsuit unless they first establish their conspiracy.

Now, we have gone along in this case and it is to the discretion of the Court that first we will introduce all of this evidence and then we will connect it up with the conspiracy.

Well, I submit, your Honor, there has been no proof, and that is my argument, that these matters are unconnected in time, unconnected in places, unconnected in circumstances of the dispute that runs back, be it TVA, be in West Kentucky or what-not, that whether or not in 1950 that these operators, alleged co-conspirators, got together with the union, they set out and embarked upon a plan and a conspiracy to monopolize the coal industry. All of these things we are talking about, they are talking about them in connection with being overt acts to carry that out.

Now, I say to you that you could not prove the conspiracy by the overt acts in that you have got to prove a conspiracy of some kind and we have waited these three weeks here and if there is a scintilla of evidence in this record of an
3398 express agreement between the alleged co-conspirators and this defendant I don't know it. I just don't think it is there.

Now, I'd like to read just a little bit more in connection with that Garmeada case because it is a Sixth Circuit case and it was on this question of the responsibility of these local officers, the responsibility of the district and the International and the acts of these local officers and I go ahead to say that the District Court refused to impose responsibility upon either the District or the United Mine Workers, declaring at Page 518 that, "Vicarious liability should rest upon more convincing evidence than that relied upon by plaintiff." Recognizing that the company's insistence upon contract compliance was calculated to arouse in the employees a bitterness of spirit difficult to allay or mollify, the District Court said, "The men had become so enraged at what they regarded as an unjust imposition upon them by the company and were in such a state of rebellion that it was obviously impossible to then persuade them to desist from pursuing their right to strike regardless of the provisions of the contract."

And further, "Representatives of the union did all that could reasonably have been expected of them in observing their duty to exercise their best efforts to maintain the integrity of the contract and to prevent the strike."
3399 The Sixth Circuit agreed to the District Court finding there.

So I submit to you, in all earnestness, that this case I think can be described that the plaintiffs have put in as one in which there has been constant assertions that there was a conspiracy, there has been constant —

The Court: (Interposing) Let me clear up just one other matter right here.

Mr. Combs: Certainly.

The Court: I take it there is no issue in this lawsuit but that officials or field representatives of the District while acting in the course of the scope of their employment would be the agents of the International, is that correct?

Mr. Combs: There is this to be said, your Honor, I think the Fourth Circuit, and I think the Sixth Circuit hold it this way, that if they are acting on behalf of the International Union that they are their acts regardless of whether they are paid by the District or International. I don't think that is a point in this case on who paid them or who appoints them. I think the question is the scope of their activities rather than just the assertion that they are representatives.

The Court: All right. Let me ask the plaintiffs *I*s it or not your contention that the local officials merely by reason of holding an office in the local would be acting for
3400 the International?

Mr. Rowntree: If the proof is that they are merely acting as a local officer that is insufficient to establish responsibility of the International Union.

Mr. Combs: That's all right.

The Court: All right.

Mr. Combs: We agree to that, it's their activities in the scope of their employment. So I submit to your Honor, and in all earnestness, your Honor, it is necessary that under the recent Pennington case and under the Carpenters case and under Alvin Bradley, under Apex, under any authority that counsel wants to quote, that they have not borne the burden of proof of clear proof that these defendants have engaged in a conspiracy in violation of Sections 1 and 2, that their evidence just simply doesn't support that.

Now, I know that counsel, and I am not going to anticipate counsel's argument, is going to talk about inference and *inferences and* inferences, but I think I have tried to demonstrate that an inference must be a reasonable inference and one inference can't be piled upon another one, it has got to be proven on the fact that they are depending on that it did happen and I submit earnestly that counsel may have a lot of suspicions that there was something going on and he has valiantly proclaimed that it was going on, but I submit, your Honor, he hasn't proved it and he hasn't
3401 borne the burden of clear proof that would have this case to go along.

The Court: All right.

Mr. Rowntree: May it please the Court, I think that what Section 1 of the Sherman Act gets at mainly is an attempt to get "fairly" into business competition, that when activities are engaged in by two or more or a group, regardless of their legality or illegality, that these acts may be far more harmful because they are participated in by two or more than if they were participated in by one, like in a football game you can have a penalty for piling on. I think we have had a considerable amount of piling on to this coal field by some groups, powerful groups on the outside.

We have filed a trial brief in this case. We attempted to, to the best of our ability in preparing that brief, to

anticipate the posture the case would be in at this stage. We believe that we have proven the elements of fact that we set forth in that brief. Some of them have not been enunciated into the record, largely the TVA market conditions are reflected in TVA records and are here in full and the same is true with respect to certain other aspects of the proof, however, we point out that there has been an inordinate amount of confusion, disorder, bloodshed in this coal field. We don't think that the local parties are responsible for that.

3402 We think that a force and a vise has been imposed on this coal field from the outside. We don't think that the normal labor relations and the feelings of employer and employee to each other could ever have brought a result like this.

There are certain fundamental principles involved in the Labor-Management Relations Act and as opposed to the Sherman Antitrust Act that need to be brought more into focus.

The fundamental thing that we charge in this case is that a group on the outside has both inferentially and expressly brought about a contract which is designed to fit the abilities and the advantages of this outside group of competitors and that that agreement is clearly and with full knowledge on the part of the defendant and unfair agreement and an impossible agreement for every coal operator who has tried to operate in this field.

We say that every one of these operators, regardless of size, has fallen flat on its face in trying to abide by that agreement in this field.

The Court: Now, let's see if I understand your position in that respect. Suppose that the International had attempted to impose upon this field an agreement with regard to wages, welfare fund and safety standards that made it completely uneconomical to operate in this field. If

3403 that activity, however, had been engaged in by the International without reference to any other operator, would you contend that there would be any action here under this type of suit for an antitrust violation or could be any under antitrust?

Mr. Rowntree: I say that we would have to show that there is an understanding, agreement or conspiracy with business groups.

The Court: In other words, the attempt to enforce an uneconomic agreement —

Mr. Rowntree: (Interposing) Per se.

The Court: Per se is not any basis of an action here, is it?

Mr. Rowntree: That's right.

The Court: So when you are talking about attempting to force an uneconomic agreement on this field, considering the position of this field, you are speaking about that as being part of a —

Mr. Rowntree: (Interposing) Part of an agreement, understanding.

The Court: A conspiracy with someone or some other operator?

Mr. Rowntree: Outside, yes, your Honor. Now, I think it inevitably gets into the conspiracy understanding or agreement with the outside group. We point out the history that we have put into this case.

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3413 Mr. Combs: If the Court please, may I just say a couple of words in reply?

The Court: Yes.

Mr. Combs: I think that counsel has stated what he is trying to do. Counsel is trying to argue that industry-wide bargaining is wrong and counsel is trying to say he wants to avoid this proposition of the union's right to try to adopt uniform wages scales and he is arguing about the harshness

of the contract that he is talking about, but I submit, in all earnestness, that counsel's arguments are addressed to wrong forum.

I think that the Congress of the United States, when it enacted the Walsh-Healey Act, when it enacted the Wage and Hour Act, and when it enacted the Norris or the Labor-Management Relations Act, in every one of those acts it was an attempt to put a floor upon competition on the basis of wages and work standards. They were trying to take out of our economy sweat-shop labor, child labor, long hours, and they were trying to do it in a way that they stated that there
3414 is a certain standard of decency that is required of people who are going to operate and compete in our free enterprise system.

Now, counsel is talking about the harshness of the contract in the Tennessee coal fields and I submit that this is a national problem and I submit also that it isn't because of any wage scale, and I think it gets back, your Honor, to what a question or two that I asked in the argument to this, counsel says that no operator down here, that these are small operators, none of them have been able to operate.

Now, let's look at the record, his own record. He is talking about Tennessee Products and Chemical, Reel's Cove. What is the record on that? They worked that mine out, they made quite a bit of money working it out. The question arose, Counsel, about whether or not to put another new mine in and what happened? We find from counsel's testimony that the great firm, the holding company of Louis Wolfson, Merritt, Chapman and Scott, in New York, who has interests in anything from a bus line to a railroad to a steel factory, that they are the ones that got ahold of Tennessee Products and Chemical and the time came when they wanted to put a new mine in that they said, "Well, now, we can make more money if we will put it in a foundry over here somewhere and make steel in a lot of instances." They said,

3415 "Well, we will go down in this area and make briquettes for barbecue outfits. We can make more there than we can in the coal industry."

Now, let's look at some of these important operators and see what they want. The last witness, Mr. Ramsey, Mr. Ramsey claims damages of $750,000. Why? Because he states in his claim that he made in 1956, when he didn't have any disturbance, no shutdown or anything else, he made $140,000 that year.

Now, I address myself to the proposition that if Bill Turnblazer is negotiating with Mr. Ramsey is Mr. Ramsey going to insist that, "Now, Bill, I want to make $140,000 and if you get me into a situation on the wage scale where I will make less than that I am not going to agree with you, it's a bad contract."

It's a strange thing that when they are talking about the inability to pay a wage scale that at the same time in their damages they get some fantastic amounts. They are asking for five or six million dollars here over a period of four to eight years.

I submit, your Honor, that counsel's whole argument and the crux of his argument is that the union ought to have had better sense, they ought to have used better wisdom, that they ought to come down here, they ought to have said to these fellows what a lot of their witnesses
3416 have testified, "You pay what you can and you do what you can, everybody will be happy." But we went through one period like that, including Tennessee, and it was chaos for everybody and I submit that the argument about the amount of the wage scale and the amount of the Welfare Fund for the pensioners and the kids dependents is a question to be bargained out between these competitors and not a question for this Court to determine whether or not the union is wise, whether it acts in regard to its demands and negotiations, whether or not there should be

$2 more or $2 less, and I think that Justice Goldberg in questioning counsel and in writing his opinion, his concurring opinion, if you please, hit the nail on the head when he said, "Suppose that the Court does attempt to say the contract is reasonable, how is the Court going to determine that? Where is he going to go to get the facts and get the wisdom to say to the United Mine Workers, 'Now, Bill Turnblazer, over here in 19 they have got a tough coal seam over here and you got a kind of — you are asking that the West Virginia people or Alabama or some of the rest of them may be able to pay, but they can't pay it, so now you are asking for X amount, you are asking for $20 a day or $25 a day. So you just ask these people for $17 a day.'"

Now according to the plaintiff's own theory of this case, he has got three groups here. He has got the hand
3417 loaders, he has got the mechanized mines and he has got the bigger mechanized mines, the completely mechanized ones. They want to put each one of those in categories. I submit that is just not the facts of industrial life today that nobody can hold back the automation and mechanization and I submit that the workers are the first ones to suffer about that but certainly to say that a man would go in here and risk his life in the coal mine and the employer say, "Now, look, I can sell my coal if you will work for a dollar less on the day or if you want to insist on paying 40 cents in there I will work with you so that I can outcompete somebody else."

I just don't think that the Congress and I don't think a decision can run in that direction and I don't think that it is a violation of the Antitrust Act for the unions to try to establish uniform wages standards and that's what counsel is arguing, that they don't have that right.

The Court: Well, let's get away for a few minutes from the national wage agreement and its effect upon this area.

What do you have to say with regard to the alleged financial interest of the UMW in one of the competitors and the bidding by that competitor on this market?

Mr. Combs: West Kentucky?

The Court: Yes.

3418 Mr. Combs: Well, I submit for the record that the record runs something like this, that the conspiracy was supposed to have started in 1950, the Mine Workers started buying stock off of the market in 1951, 1954, that by loans and the stock they held they had a substantial holding in West Kentucky Coal Company.

I submit that there is no evidence whatsoever, as a matter of fact, it's to the very opposite that they participated in any way or manner in the activities of West Kentucky Coal Company on selling its coal.

Now, I quoted from Justice Goldberg's opinion the other day, the cases that he cited, and he has about five or six of the cases here, I have them here, that certainly a stockholder, and counsel admitted it, is not charged with the activities of the corporation simply by reason that he holds stock and I submit, your Honor, this, and I think this is the heart of this thing, that counsel is not arguing that that constitutes the conspiracy. He says that is one of the overt acts.

First, he has got to prove the conspiracy that started in 1950 by this wage contract. West Kentucky at that time, by his own testimony, was a non-union coal company, had been that way for 50 years. They signed a contract in 1954. After that it is the same wage scale as any other and as far as dumping practices and competition on the

3419 TVA market, I see nothing in this record that would indicate that West Kentucky did anything like that and I submit there is not a scintilla of evidence that this defendant had anything to do with it or was connected with it in any way.

The Court: All right. Anything further at this time?

Mr. Combs: There is one thing I would like to add to that, if your Honor will indulge me a minute, and that is the talk about the so-called protective wage clause, 1950. That clause was not in the 1950 contract, it didn't become a part of the contract until 1958 and the clause by its terms shows that it didn't become effective until after April of 1959 and that clause, the wording of it, you have to read the wording of it, applies to the signatory operators and those alone. It has no reference whatsoever to what the union will do with reference to other units. It says so. It has to do with some contracting and that's the way the contract reads and we submit that is the best evidence.

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3424 The Court: All right. Well, I think I will reserve any ruling at this time on the motions and be able to announce my decision on it Wednesday. I think, however, we should prepare to proceed with the case on Wednesday morning. You be in position to start your proof at that time.

Is there anything further this evening?

Mr. Combs: Yes. We have one more motion dealing with the statute of limitations on one of the plaintiffs.

The Court: All right.

Mr. Combs: We want to renew that motion.

Mr. Rayson: May it please the Court, this motion is stated in the theories of the defendant in the pre-
3425 trial order. It is found in Paragraph No. 6, so in renewing that the United Mine Workers move that this action be dismissed in whole or in part as to each of the plaintiffs to the extent that the causes of action fail to accrue within the four years next preceding the filing of the amended complaint or the original complaint or the revised complaint, as the case may be.

In this connection the defendant contends that the statute

of limitations was not tolled as to each plaintiff until such plaintiff properly became a party to this case.

The Court: What page are you reading from on the pre-trial order?

Mr. Rayson: The page is not numbered, your Honor, it is Paragraph 6 under the additional theories upon which the United Mine Workers of America expects to defeat recovery.

The Court: Oh, yes, Roman numeral six, is that correct?

Mr. Rayson: Now, these coal companies became parties to this case for the first time in the revised complaint filed September 18, 1964, A and R Coal Company, Incorporated, J. H. Graham Coal Company, Incorporated, W. T. Morrison and Lois Hall Travis, Administratrix, doing business as M and T Coal Company, Incorporated, Stephenson
3426 Brothers Coal Company, Incorporated, East Valley Coal Company, Incorporated, H. W. Flynn Coal Company, Incorporated, and Howard Higgins Coal Company, Incorporated.

Now, in whole or in part the claims of these companies would be barred by the statute of limitations, the 4-year statute of limitations, we contend.

I might say in this connection that the Plaintiff J. H. Graham Coal Company, Incorporated, was first referred to in all of the voluminous pleadings of this case in the revised complaint in September of 1964. That company had gone out of business more than four years prior to that time. We contend that the statute of limitations is a bar to its action in this case and similar as to the others, your Honor.

Now, some of the others, I believe, continued in business within the 4-year period preceding September of 1964 and, therefore, the statute of limitations would not be a bar as to its entire claim. Some of them were not in business dur-

ing that 4-year period and, therefore, it is our contention that the statute is a complete bar to this claim.

Again I want to say that it is the defendant's position under the applicable authorities that in a class action of this type the statute does not, is not tolled as to an individual plaintiff until he makes himself a plaintiff in the case. That is our position on that point.

3427 The Court: Any other specific plaintiff other than Graham that you contend the evidence shows?

Mr. Rayson: I'd have to review the points, your Honor. We believe that A and R Coal Company, Incorporated, did not do business at any time during this 4-year period. I believe that M and T Coal Company did not do business during the period or if it did it was of very short duration. I believe that East Valley Coal Company, Incorporated, did not do business during the 4-year period.

Now, in fairness to the Court I want to say that A and R Coal Company, Incorporated, was referred to as a partnership prior to the filing of the revised complaint, it was shown, I believe, as Travis and Graham doing business as A and R Coal Company. It was not shown as A and R Coal Company, Incorporated, prior to the revised complaint.

J. H. Graham Coal Company, Incorporated, was not referred to in any manner prior to the filing of the revised complaint.

W. T. Morrison and Lois Hall Travis, while they appear in this case as partners in different businesses, were not shown as partners in the M and T Coal Company nor was any claim made for M and T Coal Company prior to the filing of the revised complaint.

I believe that Stephenson Brothers Coal Company operated for a period during the four years preceding the
3428 revised complaint but that it was formed more than four years preceding the revised complaint. I don't

happen to have with me the authority that sets forth that statute of limitations.

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3433 W. A. BOYLE,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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3493 By Mr. Combs:

Q. Mr. Boyle, I hand you a series of exhibits that have been placed in the record here. These are Exhibits P332, 333, 334, 328, 341, 342, and 349. These are telegrams that were sent to you at different times by the Allen and Garcia Company and Mr. Fitzgerald and Mr. von Meding. I would like for you to glance at those exhibits, and I want to ask you a couple of questions about them.

A. Yes.

Q. Now, those telegrams show on their face that they were sent commencing along in 1961 by Allen and Garcia. Are you acquainted with that company, Allen and Garcia Construction Company, those officers?

A. Yes, I am.

Q. Do you recall those disputes?

A. Yes, sir.

Q. Are you acquainted with the personnel of Tennessee Consolidated Coal Company?

A. Yes, sir.

Q. Now, in 1961, this series of telegrams, did you have meetings or did you attend meetings in which Mr. Fitzgerald and other persons were present in connection

3494 with disputes that arose at their operations on the Tennessee Consolidated Coal Company's property?

A. I have had.

Q. Do you recall generally what the nature of those disputes were and what the meetings were about?

A. Yes, sir. There's some history that precedes that, that brings about the Allen and Garcia Coal Company, because they don't or didn't do and do not now own those properties. They were in there on a contracting arrangement for the company owned by Stanlee Hampton.

Q. That would be the Tennessee Consolidated Coal Company?

A. That's right. And his son-in-law, Paul Callis, was the principal officer after Stanlee Hampton removed himself from authority of the company or the authoritative position of the company, why, his son-in-law became the principal and chief officer of that company.

Q. Do you recall about what year that Allen and Garcia came on that property as the result of this?

A. Well, just from memory. I haven't looked it up, but I see these telegrams date back to '61 and '62.

Q. Right.

A. And from that, why, I believe that it would go back to '60 or '61, somewhere in there.

Q. Now, shortly after the Allen and Garcia came
3495 on this property, did they sign the Bituminous Coal Wage Agreement?

A. They signed the agreement, yes, sir.

Q. And did there come a time when the dispute arose between the local people who were working for Tennessee Consolidated or who had been working there between Allen and Garcia or who would be employed by Allen and Garcia?

A. Yes, sir, I am quite familiar with that.

Q. Do you recall a controversy that arose over the question of the competency and training programs on equipment that Allen and Garcia brought in?

A. Yes.

Q. Did the meetings that you had with Mr. Fitzgerald, did they relate to this controversy?

A. Some of the meetings, yes, some of the discussions.

Q. Would you describe briefly what the nature of the discussions you had were with Mr. Fitzgerald or who the group were or the meetings that you were in?

A. Well, the problems with the Tennessee Consolidated Coal Company down through the years of its operation by Stanlee Hampton, its owner, we had very little disagreement with the membership of our union, the local union and Mr. Hampton.

There came a time, however, when Mr. Hampton
3496 relinquished his authority, passed it on to his son-in-law, a young man by the name of Paul Callis, and unfortunately, why, in the operation of the mine he was not successful because he lacked the knowledge of operating a coal mine and the experience and the board of directors, according to what Mr. Callis told me, decided that they were going to ask the Allen and Garcia Company under contract to come in and see if they could operate the mine successfully because they were going to mechanization from a hand-loading arrangement. They were going to fully mechanize the mine.

Lack of knowledge of mechanization and coal mining on the part of the officers of the Tennessee Consolidated Coal Company resulted in them either contracting by agreement or otherwise. The Allen and Garcia people moved into the Tennessee Consolidated Coal Company. Principal officer selected by Mr. Meding, or Von Meding was a man by the name of Fitzgerald. He became the principal officer on the ground of that coal company, and a great deal of dissatisfaction arose. It was called to my attention in Washington, all of which I was serving as vice-president at the time, that the membership were very much disturbed about their jobs and about the loss of their jobs and they met from time to time with management and what happened is that they agreed to a training program.

Men are not familiar in the transition from hand

3497 loading to mechanization in all or any of the machines that I have any knowledge of or worked in without some training. So management brought a demonstrator into their mines for the purpose of teaching the employees how to operate these machines. We entered into a training or they entered into a training program down there, I had nothing to do with it.

The training program provided that these men who were employed by this company were to be given a reasonable opportunity to prove their ability through a training process so that they could retain their employment that they had put in many, many years of service with that company, all of which was to be done before the company would be privileged to go outside the employees and hire employees from other locations. That was a good faith arrangement on the part of the employees and the company then started out on their training program.

Q. And did these disputes arise over the question about that training program between the employees which resulted in certain work stoppages?

A. Yes. Work stoppages resulted because that Mr. Fitzgerald, who was in the Washington office on certain meetings, one in particular, unfortunately Mr. Fitzgerald was a man with a violent temper.

Q. Did he —

A. (Interposing) He couldn't control —

3498 Q. (Interposing) Did he exhibit that?

A. He couldn't control himself, and it was very difficult for him to adjust himself from where he came from to being reasonable in the training program with the men of that operation and the result will show conclusively that every man had an opportunity under the training program to be trained and it lasted about as long as sand running through a sieve, that's about what it amounted to, he just ran them through and said, "Why, you don't qualify. You don't meet the requirements." So the men felt that they

were being discriminated against. They were losing their employment. They weren't being given an opportunity under the good faith memorandum of agreement that they entered into to train and they were being denied their jobs and they brought other people in, one in particular, from West Virginia, who was employed doing work that a number of our people could perform, one in particular being the president of the local union.

Q. Is that Mr. Shrum?

A. Yes. And because of the improper application of the memorandum of agreement reached between the parties down there a meeting was held in President Kennedy's office. I attended the meeting. Pardon me, but the others that were there were President Lewis, President Emeritus Lewis, Mr. von Meding, or Meding, Mr. Fitzgerald,
3499 the officers of the local union, I believe Mr. Owens was there, I have had so many meetings, he was in on most of them, and some union members there, too, that I don't recall right now, but at that meeting was on the request and from the telephone call that I had received from Palm Springs.

Q. From Mr. von Meding?

A. What?

Q. From Mr. von Meding?

A. From Mr. von Meding, who was in the sunshine of Florida at the time when all of his problems were existing in his properties or the properties that he had contracted to operate and we brought him out of the sunshine in Florida to the national office and there we listened to Mr. Fitzgerald tell us why he couldn't operate his mine or operate the coal mine for the Consolidated, Tennessee Consolidated Coal Company, and to state the least, I was amazed at some of the statements that were made on behalf of the company as an excuse to rid themselves of all of the men that they promised to retrain and give training to, some men who had spent their lifetime in the industry, and for that company

down there were being wiped out of their jobs, all because of the attitude of Mr. Fitzgerald, in my opinion, and he was backed by Mr. von Meding.

Those men were not given an opportunity that they were rightfully entitled to under the memorandum of
3500 agreement that they had entered into.

Q. Now, did there come a time, Mr. Boyle, when Mr. Fitzgerald and Mr. von Meding refused to process the grievances or the complaints of these men through the dispute machinery of the contract who were claiming that they had not been given an opportunity under the contract to qualify? Did Mr. von Meding and Mr. Fitzgerald at one time refuse to process those grievances?

A. Oh, yes, and then in addition to that one of the most unfair things that should not enter into the relationship of management and labor, when you discriminate against someone because of his union activities or because he is required, you might say, to be representative of the employees, that happened to the president of the local union, who operated a cutting machine down there for years and years for this company and he was in the meeting because he was taken off of the cutting machine as unqualified to operate one and another man put on his machine.

That is how unreasonable it was and, of course, that provoked the anxiety of the rest of the people as to whether or not their job security was completely gone after entering into a memorandum of understanding that they would train to operate any and all of these machines.

Men came from West Virginia into Tennessee, so the evidence and the statements disclosed at our meet-
3501 ing in Washington, that that happened, that that occurred.

Q. Now, did you urge the men, at the request of Mr. Fitzgerald or Mr. von Meding, did you urge them to continue at work and process the grievances through the machinery

of the contract, did you try to be helpful in that respect or not?

A. I did on each and every occasion that a work stoppage would occur, that is our policy and continuing policy to try to keep the mines in operation at all times and let the contract take its way under the dispute settlement of the contract.

Q. Now, did there come a time when the contract was terminated by the Allen and Garcia Company?

A. Why, yes, unfortunately it put us in a peculiar position because the company terminated, Allen and Garcia terminated their contract. Then when the termination of the contract between the union and the management or the company, then they wanted me to get their mines back to work. I have no contract with them, the men have no contract with them. They take the position, "Well, since they are not no longer employees of the people I can't represent them for the purpose of getting the mine in operation."

Q. I ask you this, at any time during your experience with meeting with Mr. von Meding or with Mr. Fitzgerald or any occasion did you urge or did you have knowl-
3502 edge of anyone urging these men to engage in work stoppages in order to slow the production or to stop the production of the Tennessee Consolidated Coal Company and Allen and Garcia in order to favor the West Kentucky Coal Company so that they could sell coal or in that section, did you ever have any knowledge?

A. Absolutely not, that was never a matter of consideration on any of these work stoppages at all, and I discussed them at length with Mr. Hampton, who was out of the company but held some interest in the company, a man that I had the pleasure of doing business with for many, many years. I would like to say at this point a very pleasant relationship existed between Mr. Hampton and me personally and between the company and the union and all of that changed when the company decided to bring in a con-

tracting party by the name of Allen and Garcia to operate that mine.

I talked with Mr. Paul Callis, it's no secret with Allen and Garcia, that I asked him wasn't it possible for the company to continue with operating without a contracting company in there, not that we had any business to do with it. He told me they were experienced people, they were bringing them in to operate the mine. We did the best from there on to carry out the terms of our contract that we had with them.

Q. Now, Mr. Boyle, I was asking you a while ago
3503 in connection with your negotiations of the 1964 contract with BCOA and subsequently negotiations with Peabody, and I asked you if there was a work stoppage at that time in the coal mines while you were negotiating those contracts and you said there was no.

A. Not with the Bituminous Coal Operators' Association, that was the question, I believe.

Q. Was there a stoppage in the Peabody mines when you were negotiating with Peabody?

A. Yes.

Q. All of them or some of them?

A. Yes, there was. That was because there was no contract with the Peabody Coal Company, the men figured that they were not obligated to continue at work without a contract and they so let the company know by refraining from working. There was no contract in existence and they refused to sign the contract until they negotiated and during the interim period the men decided that they weren't going to work without a contract. They had no assurance from the company or from their union what wages they would be receiving or what other benefits that they would derive from the coal company for working during a period for which they had no contract, so they struck.

Q. Did they go back to work after the contract was executed?

3504 A. They went back to work when the contract was signed.

Q. Mr. Boyle, I will ask you, are you acquainted with the properties of the Tennessee Products and Chemical Company in south Tennessee?

A. Yes, sir, to some degree I am, yes, sir.

Q. Has there been local disputes between the employees of Tennessee Consolidated on various matters in the last few years?

A. Yes, sir, there has been.

Q. That resulted in work stoppages?

A. Huh?

Q. That resulted in some work stoppages?

A. Locally and without the knowledge of the international organization.

Q. Now, I ask you if at any time you or any representative of the Mine Workers, to your knowledge, urged these men, the employees of Tennessee Products and Chemical, in any manner to engage in work stoppages in order to slow the production or stop the production of Tennessee Products and Chemical in order to favor the West Kentucky Coal Company's competition in the TVA markets?

A. Absolutely not, and in addition to that, Counselor, why, the West Kentucky Coal Company or any other company was never discussed at any time with me or
3505 with, to my knowledge, with any of the other international officers by the Tennessee — by the representatives of the Tennessee or the Allen and Garcia, Tennessee Consolidated Coal Company or the Allen and Garcia, the West Kentucky Coal Company, or any other company that I know of was never mentioned along the lines of favoring one against the other or competitionwise, or anything else. I don't recall of any discussions, if any discussions were ever had.

Q. Now, in connection with the West Kentucky Coal Company, have you had experiences in connection with the

contract execution and grievances that may have come up as the result of the contract at the West Kentucky Coal Company?

A. That 1964 contract you mean?

Q. No, I mean in the last few years have there been disputes and grievances?

A. Well, I should say so, maybe perhaps more disputes than — equally as many, at least, as we had with the Tennessee Consolidated Coal Company and work stoppages.

Q. Have there been work stoppages in West Kentucky?

A. Yes.

Q. Now —

A. (Interposing) Repeatedly the company called upon me, both as vice-president and president, to excerpt what I believe the language they used, "to use your good
3506 office to see that the mine was restored to operation." On each and every occasion I responded.

Q. Now, in connection with West Kentucky Coal Company, have you or anyone representing the United Mine Workers, to your knowledge, treated West Kentucky Coal Company contractually or otherwise any different than any other coal company, any special favors or privileges in your dealings with them on your contracts?

A. Definitely not.

Mr. Rowntree: I object to the form of the question. At one time he said, "with respect to the contract or otherwise."

Mr. Combs: I strike the "otherwise."

Mr. Rowntree: All right. You talking about on the collective bargaining?

Mr. Combs: I am talking about the collective bargaining level. I am glad that you reminded me of that because I didn't want to ask that question.

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3646 JOHN OWENS

a witness called at the instance of the defendant, having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION

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3685 Q. All right. Let me ask you about another subject. There has been introduced into this record the amount of money or the amount of stock that the Mine Workers owned in the West Kentucky Coal Company, the amount of loans that were made to Cyrus Eaton or his business enterprises which was secured by West Kentucky Coal Company stock and I won't go through all of that again or the details of that, but does the Mine Workers now own any stock in West Kentucky Coal Company?

A. No, sir.

Q. Have those loans been repaid or has the stock that was pledged to secure that been sold?

A. Yes.

Q. And to whom was it sold?

A. Island Creek Coal Company.

Q. Do you know when that was?

Mr. Rowntree: We object to this line of questioning on the ground the best evidence are the papers covering this transaction, would be the best evidence.

Mr. Owens: Your Honor, I think this witness can state whether it has been sold or not. We are not going into the details of the selling. He can state whether they own any stock in the West Kentucky Coal Company.

3686 Mr. Combs: If the Court please, may I add one thing in connection with this? Counsel had interrogatories with reference to this and counsel has not introduced those interrogatories and counsel is saying we are not asking about any particular detail. We are asking this

witness, who is the secretary treasurer, if the United Mine Workers still own that stock and, if not, what happened to it. I think that is a legitimate question and going to the point.

The Court: I believe I will overrule the objection and let you develop that on cross examination.

Q. Does the United Mine Workers own any stock, either common or preferred, in the West Kentucky Coal Company?

A. Not a share.

Q. And have the stocks that were pledged to secure those loans, have they been sold?

A. Yes.

Q. And all to the Island Creek Coal Company?

A. All to the Island Creek Coal Company.

Q. And what dates, do you recall the dates?

A. I think the common stock of West Kentucky and the preferred stock of Nashville was sold on the 23rd day of September, 1963, and the preferred stock of West Kentucky, preferred stock was sold on December the 2nd, 1963.

Q. Mr. Owens, will you state why the Mine Workers purchased this stock and why they made the loans
3687 that they did to Cyrus Eaton's business enterprises?

A. Well, the primary purpose of Mr. Cyrus Eaton interesting himself in the purchase of West Kentucky stock, I think perhaps it was known within the council of the industry that the West Kentucky Coal Company was financially — or the West Kentucky Coal Company was in a position that its stock could be bought, it was scattered all over the world, the common stock, and Mr. Cyrus Eaton came to us. He was interested in buying stock in that company and he bought the stock. We lent him the money, I think some 320,000 shares of common stock, hypothecated the stock for the money we loaned him.

West Kentucky Coal Company was interested in the Nashville Coal Company, they bought it and requested a

loan, $4,500,000 to buy 4,500 shares at a hundred a share, 4500 shares at $100 a share of preferred stock.

In the meantime we bought 50,000 shares of West Kentucky preferred stock and I think a hundred and sixty some thousands shares of common stock of West Kentucky, making a total of Eaton's interest and our interest of some 480 some thousand shares of common stock and 4500 shares of preferred stock of Nashville and 50,000 shares of common stock of West Kentucky, making a total investment in loans and in stock purchases of approximately $20,000,000.

Q. Why was this done?

3688 A. It was done for the express purpose that Eaton thought that the property was a good investment. We were encouraged because Cyrus Eaton was known as a liberal tycoon in the financial channels of this country, in railroads and ore mines and other interests, and that property had been operating without a contract down there for 75 years and men had been coerced in almost every walk of life.

* * * * * * * * * *

A. We had representatives located at Madisonville, Kentucky, who eyewitnessed and conferred from time to time, held elections with the employees of the West Kentucky Coal Company and we won it by actual vote and they refused to consummate an agreement and it was known to our representatives that those men were wanting to join the

3689 United Mine Workers of America and become under the industrialwide contract. They had witnesses all their lives, their fathers before them, songs were written about loading 16 tons and still in debt, pill boxes was erected around some of the mines, not the West Kentucky but other mines adjacent to it that was operating under the same system.

Q. Is that the Nashville Coal Company?

A. Yes. Thugs were employed, men's privacies was invaded, men were accused of all kinds of things that they

weren't guilty of. They couldn't visit one another's homes in any numbers because they would be accused of banding and confederating. They couldn't discuss wages—

Mr. Rowntree: (Interposing) If your Honor please, may I ask the witness if he is talking about the administration of Mr. Hooper Love and Mr. Eaton?

The Witness: I am talking about the administration before Mr. Eaton became—

Mr. Rowntree: (Interposing) What about the administration of Mr. Mark Eastin and Mr. Hooper Love?

The Witness: They were administrating officers of the West Kentucky Coal Company but these prevailed while they were there.

Q. Do you know who owned and operated the Nashville Coal Company?

A. It was owned by Potter mostly.

Mr. Rowntree: If your Honor please, I thought
3690 we were talking about West Kentucky Coal Company.

Mr. Owens: He included West Kentucky and Nashville Coal Company.

A. And so the United Mine Workers were encouraged in the opportunity to invest this money in those properties. We thought it was sound investment. We thought that here is a segment of the production adjacent to a large consuming area, it was on the river transportation, it was available to market coal even into Florida, and we thought that by buying stock in that company, lending Cyrus Eaton and his associates money to buy it, that this would give these men an opportunity to vote under the law and ask for recognition by the United Mine Workers to sign the contract and become members of our union and work under the industrialwide contract as 77 per cent of the other employees in the industry do, so we did it.

Q. Did Cyrus Eaton subsequent to this get on the Board of Directors of the West Kentucky Coal Company?

A. Yes, yes, sir.

Q. Did they subsequently execute a contract with the UMW?

A. Yes, sir.

Q. Now, do you recall loans made by the United Mine Workers to the West Kentucky Coal Company over a period of time that total approximately $900,000?

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3693 Q. Well, what did the United Mine Workers or its officers do in connection with the management of the West Kentucky Coal Company?

A. We had nothing to do with the direction of the working force or the management of the mine or any of its operation.

Q. What about its pricing?

A. Nothing to do with it.

Q. How about its bids that it submitted to either TVA or to any other coal purchaser?

A. We didn't know they was making bids.

Q. Do the United Mine Workers have

A. (Interposing) Other than we saw that they would be an award published that this coal company and that coal company had received an award for so many thousands of tons of coal, why, those are published and we read the publications in the public press.

Q. Well, did the United Mine Workers have information as to the details of the bidding for all of the coal to be sold to TVA during this period of time?

A. No.

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3695 CROSS EXAMINATION

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3735 Q. Now, Mr. Owens, you mentioned the investments of the United Mine Workers in the West Kentucky Coal Company.

In addition to those amounts is it not true that you pledged $5,200,000 of UMW assets to support a loan by

the National Bank of Washington to West Kentucky Coal Company?

A. Yes, sir.

Q. And I think the record already shows the purpose of that loan. What was the purpose, as you recall, the purpose of that loan?

A. Well, I don't know what they did with the money, I told you we didn't have anything to do with it.

Q. Was that loan not made by the National Bank of Washington at the request of the United Mine Workers?

A. Oh, no; oh, no; oh, no, it was made at the request of the officers of the West Kentucky Coal Company.

Q. But the bank made the loan at your request?

A. No, sir, not at our request, we didn't even know
3736 they wanted a loan until they requested it.

Q. Well, the bank made it at your request, right?

A. I am telling you that the West Kentucky Coal Company made the request that the loan be made to the National Bank of Washington, not me or not our organization.

Q. Well, whatever the papers on that loan reflect would be the true statement of the negotiations of the loan?

A. They borrowed $5,200,000 at 5 per cent interest, I think it was, and we pledged the equivalent amount in government bonds to guarantee the fulfillment of that loan and it was paid off in its entirety and it is not in existence now.

Q. When was it paid off, Mr. Owens?

A. It was paid off, I think, after the 23rd of September, 1963.

Q. Is that the date when the West Kentucky operations were sold to Island Creek Coal Company?

A. Yes, but they assumed the responsibility of that obligation of the West Kentucky Coal Company to the National Bank of Washington, just the same as they assumed the other loans, one of them to a bank in Knoxville and a bank in Nashville, I think, and perhaps — you have,

you had a list of them — and perhaps one or two banks in New York.

Q. Now, Mr. Owens, did you explain to the membership in the convention of 1960 the reasons for the acquisi-
3737 tion of the West Kentucky Coal Company and Nashville Coal Company as securities?

A. I addressed the convention in 1960, now, no doubt on that subject matter.

Mr. Rowntree: I wish to read from the 1960 minutes, Page 259, Exhibit D135, "The West Kentucky Coal Company was breaking the price of coal down in every market that it could penetrate. Indiana and Illinois production was constantly being attacked by the low wage scales paid in those mines and the sales marketing policy of this nonunion coal company. We make no apologies. There are a billion tons of coal there. It is located in a position where it can be marketed upon the Ohio River and into the Tennessee Valley, which is the largest coal-consuming market there is anywhere in the world."

Q. Does that express the reason why the United Mine Workers acquired —

A. (Interposing) That part of the low wages paid to those employees in those mines, yes.

Q. This is talking about the West Kentucky Coal Company?

A. West Kentucky Coal Company's low wage, nonunion.

Q. Mr. Owens, do you not know that West Kentucky Coal Company was paying its employees a wage
3738 equivalent to the UMW scale prior to these acquisitions?

A. I know that that is not true.

Q. Well, Mr. Mark Eastin of the company was president before and after these acquisitions, was he not?

A. That is right. The fact that they petitioned the United Mine Workers organization to represent them by

vote and was glad to come under the industrialwide contract would be sufficient evidence to any intelligent man that that condition of higher wages and better working conditions and satisfied employees was not true.

Q. If Mr. Mark Eastin testified in this lawsuit that West Kentucky Coal Company was paying wages equivalent to the UMW scale—

A. (Interposing) Well, Counsel, I am not responsible for Mark Eastin's conscience. Why blame that on me?

Q. Did you know that the West Kentucky Coal Company had a welfare fund into which the company was paying 40 cents a ton prior to the acquisition of the West Kentucky Coal Company?

A. They alleged that they had such a fund but I knew they could discontinue it any time they wanted to up or down, wipe it out, discontinue with the hours of employment or the amount of wages that they were paying them unilaterally any morning they wanted to by posting a notice, as they had done many and many times over a period of 75 years.

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3739 Q. And you deny that the West Kentucky Coal Company was paying a wage back at that time equivalent to the UMW scale?

Mr. *Comsb*: May I ask counsel to state what time he is talking about?

Mr. Rowntree: I am talking about before, well, before the recognition of the UMW.

A. I don't believe they was.

Q. Now, you say you do not believe that?

A. That is right.

Q. Do you know?

A. Well, I didn't see them receive their paycheck or I didn't count their money, but the fact that the men in the mines who were paid were very anxious to discontinue whatever wages they were receiving and join the United

Mine Workers of America and they are very happy
3740 under the arrangement that now exists and that was the statement that coal companies that operate without recognizing the collective bargaining in their plant or in their mine tells the public that, "Our employees are satisfied, they earn more money than the men that is covered by a contract."

Q. Is that what they were saying?

A. If that was a fact, why did they propose entering into a contract with the United Mine Workers? Why did they oppose it for 80 years? Because it was not a fact, because it didn't exist and everybody in the community knew that it wasn't true regardless of what they said.

Q. Was Mr. Mark Eastin retained as president of that company after the UMW investments?

A. He was president after we—you mean when the coal company was taken over by Mr. Eaton, he was president.

Q. And he was retained as president through practically the entire period that the UMW maintained those investments?

A. That's right. I don't believe that—I told you we didn't have anything to do with the management of the mine, selecting the corporate head or the administrative officers of the West Kentucky Coal Company.

Q. Well, Mr. Owens, isn't it true that this representation to the membership tells them that one of the reasons why you made these investments was because the
3741 West Kentucky Coal Company was breaking the price of coal down in the markets?

A. By paying less wages they were able to market the coal.

Q. That's the reason that you made these acquisitions?

A. That was one of the reasons why we invested in that company.

Q. So it was your purpose then to correct these practices,

isn't that the representation you made to the membership?

A. Now, the purpose of it was to try to bring them under the terms of the contract, that has always been our purpose.

Q. And your purpose was to correct the breaking down the price of coal in the markets?

A. We didn't have anything to do with the price of the coal, they could sell it even when they are union or non-union for whatever price they wanted to.

Q. Were you expressing to the membership in the official convention of the union the reason for this investment and this was one of them, wasn't it?

A. No.

Q. You mean you were just stating this?

A. What I was trying to convey in my humble way
3742 was that the wages paid to those men down there made it possible for this corporation to market coal under that wage structure that was affecting the employees that we represented in those markets where they were marketing their coal and as an institution we had a right to use the money to do it.

Q. And that's what you did?

A. Or any other honorable means provided for under the law.

Q. And that's what you did?

A. That's one of the ways we helped bring about the complete — to complete a contract in there because Mr. Eaton entered into the agreement. We might have failed, but we didn't.

Q. And these fields that you were concerned about, the market fields, were Illinois and Indiana, is that not right?

A. Well, I was interested in any field where the mines are under contract, union or non-union, as far as that is concerned.

Q. And this is part of the area of the Bituminous Coal Operators Association, is it not?

A. Well, yes, one part.

Q. Now, is it not true that you did correct the pricing policies of this company in those fields?

3743 A. Why, I can't testify to that because I don't know what the coal pricing policy of the West Kentucky Coal Company was then and is now.

Q. Well, you made a representation here about it back at that time. You knew at that time, didn't you?

A. No.

Q. You mean you made this statement without any knowledge whatsoever about it?

A. Well, I assumed that that was correct, that's what they were doing.

Q. You mean this was totally an assumption on your part?

A. My complete knowledge that men who don't pay the prevailing wage scale has an advantage over the fellow that does pay the scale, anybody knows that, that is an ABC policy.

Q. You are still testifying that West Kentucky had a lower wage scale than the UMW contract?

A. I believe that they did not have a wage scale equivalent predicated upon the hours provided for in the industrialwide contract that they had after they signed the contract.

Q. Now—

A. (Interposing) They might have had some man that they were paying even more than the wage stipu-

3744 lated in our contract, they might have had some company suck parading up and down Madison showing that he was getting more wages than the United Mine Worker contract provided for. That is a policy of all of these non-union coal operators, showing how virtuous they are and "We are paying the equivalent or more than the United Mine Workers contract provides." And any sane man knows that if it wasn't for the United Mine Workers

contract they wouldn't be paying half of what they were paying. It is because they were fearful that their employees might decide that they are entitled to the wage covered by the contract and so they would try to satisfy them with that policy, but they got tired of it, sick of it.

Q. Now, Mr. Owens, you say that you observed the awards of the TVA on the coal market?

A. Not very closely, sir, I have read them.

Q. Well.

A. Unless it would be some extraordinary award made.

Q. You did read the awards that were mentioned in the United Mine Workers Journal from time to time, did you not?

A. I may have done that, sir, yes.

Q. And were you not familiar with the fact that the price breaking practices of West Kentucky Coal Company was going on down in this big new TVA market in
3745 the year after you acquired this stock?

A. Well, I am not familiar with their pricing policy.

Mr. Combs: Just one moment.

A. I testified to you, I testified that I know nothing about their price policy or their marketing of the coal, we had nothing to do with it.

Q. Well, the UMW was very much interested in these pricing policies of TVA, was it not, Mr. Owens? Don't we have repeated references to it in the official minutes of the union and in the United Mine Workers Journal?

A. It was a large consumer of coal and one of the part-owners of TVA as a taxpayer I am very much interested in that they purchase coal and on the basis that will pay the employees that produce it an American standard of existence, as an ordinary citizen outside of a labor representative I am very much interested in that.

Q. And you would be interested, too, in the pricing prac-

tices of West Kentucky Coal Company at the very low loss prices, would you not, Mr. Owens?

A. I am interested in any company that may sell his coal below the cost of production, I think he is making a mistake when he does it.

Q. All right, sir. So did you do anything about it?

A. We don't have anything to do with it, I tell
3746 you.

Q. Did you do anything about the practices of West Kentucky Coal Company?

A. No, we didn't have nothing to do with it, we couldn't.

Q. Even though you acquired this investment for the reasons that you stated in this convention?

A. We know that we didn't have anything to do with the directing of the pricing or marketing of the coal.

Q. Did you not, you and the other Mine Workers officials, enter into a joint business enterprise with Mr. Eaton in this transaction?

A. Sir?

Q. Did you not enter into a joint business enterprise with Mr. Eaton?

A. We lent him money to buy, he wanted to buy stock in the West Kentucky Coal Company and we lent him the money, hypothecated the stock.

Q. And you were to divide the profits?

A. Sir?

Q. And you were to divide the profits with him like any other partners in a joint business enterprise?

A. He was to pay so much interest and when it was made the stock was paying a dividend and the dividend was discontinued, on some of it he paid 4 per cent interest, on the loan.

3747 Q. Now, as makers of this investment you were using United Mine Workers funds, were you not?

A. That is right.

Q. And you were trustees of those funds?

A. Yes, sir.

Q. In a fiduciary capacity?

A. Yes, sir.

Q. And you took no step whatsoever to preserve the intact value of the assets you acquired with this investment?

Mr. Combs: I object to that question, it's argumentative.

The Court: I will allow the witness to answer.

A. No, we had nothing to do with the pricing of the coal or management.

Q. You had nothing to do with the preserving of the value of those assets?

A. No.

Q. How much loss did you suffer on this investment?

A. Well, I think the debit and credit side of our books shows that the difference in the loans and the price that was — and the cost of the stock and the sale of it amounted to approximately $8,000,000.

Q. Eight million dollar loss, is that correct?

A. Well, you might call it a loss but they not only—we sold that stock for less money, $13,000,000 or ap-
3748 proximately $13,000,000, 12 million and some, and we had $8,000,000 in the stock and loan and I say on my books it shows that it is an eight, approximately $8,000,000 loss as far as transaction in dollars, but to the human investment that we made in those mines, the men working in those mines, we think that investment has been well made.

Q. You are —

A. (Interposing) In addition to that — you asked me now — in addition to that that company paid approximately $35,000,000 into the Welfare and Retirement Fund, 40 cents a ton on every ton of coal they produced.

Q. Is it not true that that company would have paid the same amount of money into its own welfare fund if these investments had not been made?

A. Well, I don't know as they would. I have no evidence

that they would have. They might have discontinued it, the company might have went out of business, closed the mine down and the men wouldn't have had any Welfare and Retirement Fund, as many a company has done in the last 10 or 15 years.

Q. Companies that were not supported by loans from the United Mine Workers?

A. Companies that was not supported by loans of the United Mine Workers. They alleged that they were establishing a Welfare and Retirement Fund for their
3749 employees but the company went into the hands of receivers, they had used the money.

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Mr. Owens: Your Honor, I would like to read the remaining part from the speech that Mr. Owens gave in the 1960 convention regarding the investment in West Kentucky. Mr. Rowntree took out a middle paragraph and I would like to read into the record the paragraph preceding that and the one that follows. It says as follows on Page 259 of the 1960 proceedings:

"The other investments that we have made have been made in trying to help the depressed coal mining industry
3750 maintain the industry-wide wage contract. We have loaned or invested or have pledged as security some $26,000,000 in the West Kentucky and Nashville Coal Companies. What is wrong with that undertaking? Why are they so galling and worried about our having money invested in the coal industry where you men work? The West Kentucky Coal Company operated its mines non-union for 80 years, and Justin Potter operated the Nashville Coal Company with cement blocks around the property manned with guns to prevent any union man from even peeping into his properties. So that when that liberal financier asked for a line of credit to invest in the stock of the West Kentucky Coal Company, we loaned him the money. We started in 1951, and by 1954 and 1955 the old West Kentucky and

Nashville Coal Company became union mines. Why, they liberalized that country down there, and if I have not been misinformed, they have become so liberal that now they want to liberalize the United Mine Workers of America. That is, some of them do. They have an awakening coming."

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3751 "The West Kentucky Coal Company has facilities on the Ohio River that can transport coal down to New Orleans, across the Gulf of Mexico and down to the new market of Tampa, Florida. It has paid union wages to the extent of $81,000,000 since we organized it. If the figures are right — and I know they are — they have paid some $14,000,000 into the United Mine Workers of America's Welfare and Retirement Fund. So we have a great undeveloped virgin piece of coal adjacent to transportation on the great waterways of our country, adjacent to the largest coal consuming market in America, with hundreds of employees peacefully employed and paid industrial wages. We make no apologies to you or anyone else for making those investments, and especially to those people who are so worried about the financial structure of our great union and the soundness of its policies."

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3755 The Court: Mr. Owens, could you give us what your knowledge is as how and when the notes from Mr. Eaton that were secured by the West Kentucky stock were liquidated or were paid off or were terminated?

The Witness: Yes. You mean for this nine hundred — nine hundred dollar loan?

The Court: No, the loans that were secured by stock, West Kentucky stock.

The Witness: They were paid off on September the 23rd, 1963.

The Court: And how were they paid off?

The Witness: We took the stock and canceled the notes

because he couldn't pay the notes off and the stock became property of the United Mine Workers of America.

The Court: And then what did you do with that stock?

The Witness: We sold it to the Island Creek Coal Company, $12.50 a share.

The Court: All right. And when was that?

The Witness: September the 23rd, 1963.

3756 The Court: At the same time?

The Witness: At the same time.

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JOHN L. LEWIS

DIRECT EXAMINATION

(Mr. Combs read the questions and Mr. Rayson the answers.)

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3762 Mr. Combs: That is right. I thought I explained that but I guess I didn't. We are not relying on Mr. Rayson being the witness, we just wanted the constitution in. May we continue, your Honor?

I have here the Constitution of the International Union of the United Mine Workers effective October 1, 1964, adopted at Bal Harbour, Florida, September 9, 1964. I'd like to introduce that as an exhibit at this time.

The Court: Exhibit No. 370.

(The constitution referred to above was marked D370 and received in evidence.)

(The reading of the testimony was continued.)

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3797 "Q. For what purpose did the United Mine Workers of America buy stock, shares of stock, in this corporation?

"A. Because the United Mine Workers had idle money they wanted to put to work to invest. They wanted to do so in such manner as would benefit the members of the United Mine Workers of America and be to their advantage in the

industry, and because we were familiar with any of
3798 the problems of the coal industry and have a reasonable understanding of the problems of any major coal company in any district of the United States.

"Q. Did you and other representatives of the United Mine Workers of America charged with the investment of United Mine Workers of America funds think this was a good investment?

"A. Yes. Yes, that was a very good investment, because we were familiar with the assets of the company, the type of the coal, and strategic location on river transport, and we think that that company has an intrinsic value many times worth what it appears to be in the market.

"Q. As I recall in the deposition that was taken of you, and perhaps some other time, someone raised the question that the current market price of the stock of West Kentucky Coal Company has at times been less as quoted on the New York Stock Exchange than what the United Mine Workers of America fund paid and that you did not sell the stock at that time.

"A. That is right.

"Q. Why didn't you?

"A. It was not to our advantage because we did not invest in the West Kentucky Coal Company stock for the purpose of making a capital gain or a profit. We wanted to make a contribution to the wider employment and the greater employment of the members of the union in that
area, and we thought that the company had a great
3799 future and a great intrinsic value which would develop when they were able to refinance themselves and catch up with the obligations that they incurred on the purchase of many of the assets of the company.

"For instance, one of those assets was the Nashville Coal Company which West Kentucky acquired. And the West Kentucky went off a dividend basis largely, I understand it, in order to pay the payments for the Nashville Coal.

"No reason at all in the face of existing circumstances of the industry that the West Kentucky Coal Company would not appreciate its market value in the future, and I recall, Counselor, this vital affect.

"The stock was selling at 35 for a long time while our investment in it did not average 26. We could have sold out for a profit and taken our small profit and got out, but that would be merely speculation on stock market values and is of no advantage to the members of the United Mine Workers.

"Q. So you did not sell when the stock went above what you paid for it and neither did you sacrifice it when it went below?

"A. That is right.

"Q. But you continued to hold it because of its future prospects and the opportunities for increased employment, and so on, in the area as an investment?

3800 "A. That is correct. As far as my knowledge of the subject goes in my judgment."

* * * * * * * * * *

"Q. Mr. Lewis, there is something said in this record about — that the United Mine Workers of America made some loans to Mr. Cyrus Eaton, and that he used it to buy some stock, perhaps he or some of his companies, in West Kentucky Coal Corporation.

"Would you comment on it, please?

"A. Yes. Mr. Eaton was a man of acknowledged industrial success and one of the leaders in the financial and industrial world of the country whom I had known for a long time, and we invited him to make a joint venture with us in the West Kentucky purchase of stock, and we loaned him some money to buy stock. We took the stock as security, and that is the arrangement that was worked out.

"Q. Something has been said here with reference to those loans made to Mr. Eaton, or made to some of the companies like the Chertsey Company or one of the other companies

he was interested in, as to the type of provision in
3801 the notes given with reference to interest and dividends and that the interest, or about a part of the dividends that would be received from the stock if paid by the company. Would you comment on it, please?

"A. That is right. Any profit occurring from the joint enterprise in the investment were to be split mutually, 50 per cent to each. We could not ask Mr. Eaton to do so and lose his own money, so we divided the profit like joint partners in any enterprise.

"In addition to that, in the argot of the market place he gave us a call and we gave him a put. That is the way it is described in the security market day by day and there are hundreds of thousands of such agreements made daily and weekly.

"In other words, the notes, I think the promissory notes, secured by the hypothecation of the West Kentucky stock. They have been renewed annually since that time, or whatever their maturity dates are. They may have been changed since I have gone. I don't know. There was no thought when the market dropped in value of West Kentucky of asking for more security because there was no intent to sell the security, and we were conscious of the intrinsic value of the West Kentucky Coal stock and familiar with its reserve assets. It had over a billion tons of reserve coal
adjacent to the river, strategically located in the
3802 center of the steam coal consuming market at the present and in the future.

"Chemical plants are going to locate on our riverways and many other industries. The DuPont Company in its stockholders' report as of last week predicted that the chemical industry will expand for the next ten years twice as fast as the national scale of economic expansion. And it is going to come near the rivers where there is cheap coal and transportation and access to markets.

"So we think that West Kentucky Coal Company is some-

thing worthwhile as a long term investment, not only financially but in the interest of our members in that area who are given employment, who have been raised out of their previous servitude and are more prosperous than they ever were in all their lives. And in that respect, the money of the United Mine Workers invested there, which is primarily acquired, paid in by the members for the use of the union in promoting the well-being of the members, that has brought a great return already, enough to justify the investment.

"Now, on the question of why didn't we ask for more security. Our complete confidence in the final success of that corporation, if efficiently managed, and that is an obligation of the management and their board of directors, with which we have nothing to do and do not attempt to exercise any influence in the management of West Kentucky
3803 mines or any other coal mines in the United States.

We have a standard clause in our agreement that has been there for decades of time, quoted as follows:

"'The management of the mine, or mines, the direction of the working force, is exclusively vested in the coal operator and the United Mine Workers of America will not abridge this right.'

"We follow that out. We hold the operator responsible for the management of the mine, and far be it from the United Mine Workers of America to encroach on his prerogative, because we have troubles of our own and work to do.

"Q. Even though United Mine Workers is a substantial holder of stock of the West Kentucky Coal Corporation?

"A. Even though the United Mine Workers is a substantial holder of West Kentucky stock, we do not interfere with the management and have not done so at any time and have no future intent to do so. There can be no conflict of interest between the obligation of the officers of this union to its membership. I would rather see the

entire West Kentucky account go down the drain than to permit the losses or injury of the members of the United Mine Workers of America. We owe fealty to no other consideration except to the men who employ us, who gives us their confidence, and as far as I am concerned,
3804 whose bread I eat, whose song I sing.

"Q. West Kentucky Coal Corporation today, I believe, is a signatory to the 1950 collective bargaining agreement as amended, is it not? West Kentucky Coal Company is a signatory to the agreement?

"A. Oh, yes.

"Q. They were not at one time members, were they?

"A. No.

"Q. I will ask you whether as a stockholder you people have put pressure on them as a stockholder of the corporation or on Mr. Eaton to get them, to force them to sign a contract, or has that been voluntarily signed?

"A. None whatever, because Mr. Eaton was obviously a sagacious businessman of wide repute and eminent success and enjoys the reputation of being liberal in his viewpoints in relationship to labor and its industry. We knew that as a practical proposition it would have been foolhardy and not wise judgment to attempt to operate an industry of that magnitude without having the good will of the miners as expressed through membership in this union.

"Q. Now, going back just for a closing question on the value of these securities, why, of course, I recognize that you are not a securities investment house, advising the crowd here this morning to buy any particular stock, West Kentucky or anything else, but you still say the in-
3805 vestment of United Mine Workers, in your opinion and in the opinion of the United Mine Workers, was a good and is a good sound investment?

"A. Oh, yes. Oh, yes.

"Q. All right.

"A. I have the fullest confidence in the future of the company.

"Q. Do you know anything about the pricing policies as between West Kentucky or others and Tampa Electric Company?

"A. No, I do not know, except in general that there is a controversy. I don't know what it is about or none of the details.

"Q. You have not been interested or taken any part in that?

"A. No.

"Q. Nor United Mine Workers, as far as you know, has not taken any?

"A. No.

"Q. Now, there is a lot of proof in this record here with reference to sales made by West Kentucky and perhaps some others, coal companies, to Tennessee Valley Authority. What, if anything, have you had or United Mine Workers had to do in connection with those sales?

"A. Nothing of any kind. I read public accounts of the letting of contracts by the TVA. I see where con-
3806 tracts are awarded to a long list of suppliers. I see the contracts of West Kentucky in there. That is all we know. We are not consulted. We are not privy to it. We have no knowledge of it.

"Q. And so far as the pricing policies that are adopted by West Kentucky or others in making sales to TVA, have you anything to do with the pricing policies that are followed?

"A. Emphatically no, not in any sense of the word.

"Q. Mr. Lewis, there is some proof in this record with reference to the United Mine Workers of America buying some stock in the National Bank of Washington. Did the United Mine Workers buy some stock or did it own some stock, shares of stock in the National Bank of Washington?

"A. Yes, that is correct.

"Q. In other words, did the United Mine Workers acquire any stock in the National Bank of Washington?

"A. Yes.

"Q. And why and under what circumstances was the acquisition of this stock?

"A. As an investment, it would grow in value, and for additional advantages of having a place to use a common depository for our several funds, a matter of convenience.

"Q. Of course, the United Mine Workers of America has had some funds, a substantial amount of funds per-
3807 haps over some years. Prior to the acquisition of the stock in the National Bank of Washington, where were your bank accounts carried?

"A. Well, as I recall, they were different places. We dealt with two or three banks in Washington at various times. We tried to deal with one bank, but we weren't welcome there. We just did the best we could.

"Q. Then did you acquire, the United Mine Workers did acquire stock in the National Bank of Washington for an investment?

"A. That is right.

"Q. Was it acquired for the purpose of forcing out of business any small coal operators or large coal operators either?

"A. Emphatically no. No relation to it. I don't see how it could, but that is immaterial.

* * * * * * * * * *

3822 CROSS EXAMINATION

3826 "Q. And another important aspect of this struggle that you have mentioned that exists in the world today is the extent of unemployment in our country. Don't you think that the unemployment factor is an important item in this struggle with communism?

"A. I never knew the time in my life when I didn't believe that, that the opportunity for employment is very, very important.

"A. Yes, sir. Now, with respect to this business of the coal industry being organized into fewer and fewer
3827 units and larger and larger combines, I take it that there you are talking about large companies organized with the United Mine Workers contracts, that is your picture, is it not?

"A. No, I do not agree with you on your analysis of that subject.

"Q. You expect the United Mine Workers of America will not maintain its position as the bargaining representative in these large mines?

"A. I expect that the United Mine Workers of America will continue to protect the interest of its members in the future as it has in the past, but without assuming responsibility for determining whether there should be a merger of coal companies, or what you prefer to allude to as a combine, or whether there shouldn't be, and as to the identity of the party, that is a field in which the United Mine Workers of America does not operate for the reasons that I advanced in the hearing on direct testimony this morning.

"Q. Now with respect to these large organized companies I would like to examine the leadership that would be in control in this struggle that exists in the world which seems to have been a factor in your direct examination.

"The United Mine Workers in World War II, what kind of record did they have?

"Q. You mean a war record, or economic record,
3828 or patriotic record? What do you mean?

"Q. I mean record on strikes.

"A. Record of what?

"Q. Strikes.

"A. Strikes?

"Q. Yes, sir.

"A. Our proud record is that despite all the aggravations and the impositions imposed on the members of the United Mine Workers in World War II that we kept the

wheels of industry running. The war effort was never impaired. We produced all the coal that our organized domestic commodity could consume without impairment. We produced all the coal that our allies could not produce to sustain them in their war effort.

"And I call attention to the fact that for a long period of time the United Mine Workers of America agreed to work six days a week, nine hours a day underground, to furnish coal for our British allies who were working five days a week, eight hours underground, and the rest of the world accordingly.

"Q. And how many times did the government have to seize the coal industry to keep the mines going?

"A. Four times, as I recall.

"Q. Four times during—

"A. Not during the war, however. That was in
3829 the period of the 1940s.

"Q. Well, the war was from 1941 to 1945.

"A. That seizure, if I may add, was the seizure of the operators' coal mines. The government did not seize anything that belonged to the United Mine Workers.

"Q. Why did the government seize the mines?

"A. Because the operators were so woefully inadequately in the handling of—in the negotiation of their contracts and ignored the rights and the hope of the coal miners who were making this terrific effort to uphold the government, that the government took their mines away from them and made the contracts themselves, as witness my testimony this morning.

"Q. I believe there was a seizure—

"A. Then in order—may I add this—that the operators were anxious to get their mines back from the government, to whom they had given them, that they were compelled to agree to the terms of the agreement negotiated by the government with the United Mine Workers of America.

Testimony of John L. Lewis—Cross

"Q. I believe the first seizure was in 1943, is that right? And I read from this statement which the union made, and this is already in the record, just to refresh your recollection. 1956, Page 92.

"The 1943 seizure. This seizure lasted for five months and twelve days from May 1, 1943, to October 12, 1943.

3830 "Twenty days later, on November 1, 1943, the industry was seized again. This seizure lasted for six months, from November 1, 1943, to May 31, 1944. This seizure was not terminated in the Southern producing area until June 21, 1944.

"There was a third seizure of certain coal mines that became involved in supervisory strikes during September and October, 1944.

"There was a fourth seizure, involving certain mines from April 10, 1945, until June 3, 1945.

"Do you recall those seizures?

"A. Oh, yes, I recall them as an abstract proposition although the details of them are somewhat dimmed in my mind due to the passage of years.

"Q. Now, Mr. Lewis, in this world struggle that you have mentioned, let's examine the management's side with respect to these great combines, fewer and fewer in number, that are to take over the coal industry.

"I believe that you have selected Mr. Cyrus Eaton as the manager to whom you have loaned some — loan or invested in his company some $40,000,000; is that correct?

"A. I would not know the exact amount but certainly we have engaged in a business arrangement with Mr. Eaton as effected West Kentucky Coal Company.

"Q. And would you say that Mr. Cyrus Eaton is

3831 a man to control these great combines in this world struggle against communism?

"A. I don't know anything about any great combines. There are some great combines I know of, like the American

Telephone and Telegraph; the big companies in the steel industry. But I don't call a merger of two or three companies a great combine because none of them are very great in relation to the total tonnage of coal mined in this country and the future prospects for increased tonnage necessary to meet the requirements of our increased population.

"Q. We are talking about a tendency — a tendency to combine into fewer and fewer units. It may be just getting started, but still we are talking about a tendency, and I will ask you if Mr. Eaton is the kind of man we want to lead and control a basic industry like coal in this world struggle?

"A. Why, sir, I have no knowledge of what is in your mind, and I think — I assume you are including yourself in the first person plural "we" there.

"Q. Yes, sir.

"A. But I don't think Mr. Eaton's political opinions, pro or con, as to whether he is for war or against war, have anything to do with economics of this coal industry and certainly has never given any consideration by the
3832 representatives of the United Mine Workers.

"Q. So the world struggle is really not in question here?

"A. I do not so concede. I maintain now, as I have previously uttered, that free enterprise, as we know it, is under heavy assault from the commodities being produced in at least three countries including the communist bloc. And that if we are to compete in the world of commerce with this gigantic group of people over whom the flag of Russia flies with their skillful adaptation of the modern sciences to improve their production and make advances in this scientific world, some of which we have not yet approached ourselves, that we have to compete with them; that we have to make free enterprise more efficient; that we have to expand our economy at a faster rate than it has been expanding in order to provide a participation and job oppor-

tunity for the young people we are turning out of our schools and universities year by year in increasing numbers.

"Certainly there is a grave question upon the effect of youthful minds of not being permitted to participate in the blessings and the privileges of the Land of The Free and Home of The Brave. Those are matters of concern and those are the questions to which I alluded in talking about the communist menace, and it is not only recently I am talking about that because the United Mine Workers
3833 of America petitioned Congress in 1924 to investigate the communist propaganda in this country when the rest of the country had scarcely heard of the question. It is all of record and for all to read."

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3850 JOHN L. LEWIS,

CROSS EXAMINATION (continued)

(Mr. Rowntree read the questions and Mr. Chambliss the answers.)

* * * * * * * * * *

3856 "A. We are convinced with respect to West Kentucky Coal Company it was entirely justifiable; has already brought substantial returns in employment and wages under this industry contract to thousands of men in west Kentucky.

"Q. Do you know how many employees there were in the West Kentucky Coal Company in 1950?

"A. No, I do not, not from memory.

"Q. Do you know how many there were in the year 1960?

"A. No, I do not.

"Q. Now, Mr. Eastin testified that there were 3,000 employees in West Kentucky in 1950, and approximately 2,200 in 1960. Now, I would like for you to explain how the union has attained its objectives in investing the funds if its objective was the employment of members of the union?

"A. By merely contrasting the annual wages, the daily wages of the men who remained employed in the mines with

what they might have made before West Kentucky Coal Company signed the industry contract. West Kentucky Coal Company has been there for 75 years and the wages were always sub-standard, and the conditions of
3857 employment were always not up to the normal of the industry.

"Q. Well, Mr. Lewis, Mr. Eastin also testified that the wage paid by West Kentucky Coal Company before it signed the contract with the union were equal to or greater than the union rate, and that the welfare provisions of the company with its employees was equal to or greater than the welfare provisions under the union contract.

"A. That is possible at that time. Doesn't make any difference, because the West Kentucky Coal Company was probably afraid of unrest among their employees and they gave them as little as they could that would content them. That is a device that is used by lots of companies in this country.

"Q. Well, as little as they could, does that characterize the terms contained in the National Bituminous Coal Wage Agreement?

"A. As little as they could?

"Q. Yes, sir.

"A. We had no contract with them.

"Q. Yes, but the testimony was that the company rate of pay was equal to or greater under the company before it signed the contract as it was afterwards.

"A. That don't make any difference with the merit of the proposition, because it is quite possible that they
3858 got it all back by increasing the company's store prices in which the men were obligated to trade.

"There are a lot of devices in the coal industry that employers utilize to exploit to the maximum their employees and get back all the amount of money they paid them for working in the mine; company store accounts, with them in charge of the prices, non-competitive, obligatory to trade

there; rental of company houses, been amortized a dozen times at high rent; selling of coal; paying of electric lights; charges for water; the innumerable things that the company imposed upon employees they were free to do so and unrestricted by any collective bargaining contracts.

"So those rates that you allude to mean nothing.

"Q. After the union invested these funds in the West Kentucky Coal Company and Nashville Coal Company, those companies have offered bids on the TVA market, particularly the spot market of TVA at low and dropping prices time after time with gigantic tonnages, isn't that right?

"A. I do not know of my own knowledge. I have no knowledge of any negotiations, coal contracts, conversations, sales, or rejection of bids of any character affecting the West Kentucky Coal Company, or any other coal company, until I receive the lettings of the TVA's which was published as to who received the contracts.

"Q. And from—

3859 "A. I do know from reading the public press that there are other companies there that furnish coal in greater volume to the TVA and were contracted for longer periods than has been reported publicly by TVA as affecting West Kentucky, but to my knowledge, I know nothing.

"Q. While these coals were being put on the spot market by West Kentucky, were you not urging the TVA to eliminate the spot market?

"A. We were urging them not to defeat the purpose of Congress."

* * * * * * * * * *

"A. By giving repetitious less than $10,000 contracts, because we thought that was evasion and was not in accordance with the intent of Congress, and it enabled

3860 them to buy coal from brokers who acquired it from mines not recognizing the American standards as expressed by the Walsh-Healey Act.

"Q. The Walsh-Healey Act expressly exempted from

the minimum wage determination contracts for less than $10,000?

"A. And they were expressly exempted by Congress from the Walsh-Healey Act, yes.

"Q. Yes, sir.

"A. Contracts of less than $10,000. All right. Congress, however, in our estimation, did not mean that the TVA company could just put a $10,000 limit on all their contracts and continue repetitiously to buy it from the same people time after time, $9,999 worth of contracts. That was not intended."

* * * * * * * * * * *

"A. We urged them two things: Not to practice evasion on the letting of the $10,000 contracts, and defeat the intent of Congress; and, secondly, to buy coal from mines recognized by the Congress as paying the American standard, and not sweatshop coal.

3861 "Those were the two things that we recommended to TVA, and that is all, at any time, in any contact, or conference, with any representative with TVA with whom our representatives conferred.

"Q. And you were urging the TVA to eliminate the spot coal market?

"A. No. It could buy all the spot coal they wanted as far as they could get it on the market, but we urged them to comply with the law as we understood it on the $10,000 contracts.

"Q. And the law permitted tonnage which would amount to less than $10,000?

"A. It obviously permitted one, but there was nothing in it that would signify that it permitted 20 or 50 repetitious contracts of the same character with the same purveyor of coal.

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3965 Mr. Combs: Next, Your Honor, we would like to read from the Pennington case by virtue of a stipulation

entered into by the parties the direct testimony of Miss Josephine Roche, which was given in April of 1961, page 1006.

JOSEPHINE ROCHE,
DIRECT EXAMINATION

(Mr. Combs read the questions and Mr. Rayson the answers.)

"Q. This is Miss Josephine Roche, I believe? That is your name?

"A. Yes.

"Q. Miss Roche, are you one of the three trustees of the Welfare and Retirement Fund of the United Mine
3966 Workers of America?

"A. I am one of the three trustees of the United Mine Workers of America Welfare and Retirement Fund.

"Q. Miss Roche, where were you born?

"A. Nebraska.

"Q. In Nebraska?

"A. That is right.

"Q. During your early life, girlhood, where did you live?

"A. In Omaha, briefly in Sioux City, and then in Denver, Colorado, and part of the time also in northern Michigan, St. Sault Marie, very briefly.

"Q. What line of work was your father engaged in? Just briefly.

"A. Briefly, my father was primarily a banker, opened his first bank west of the Mississippi River in Eastern Nebraska. He was interested in all kinds of development of the western possibilities, lands and farms, cattle, also in Michigan, had interests in Michigan timber developments and then later in the coal developments in Colorado.

"Q. During his later years, he was interested in developments in coal?

"A. That is right, sir.

"Q. Of what institution or institutions are you a graduate?

3967 "A. Of Vassar College and my graduate work in economics and social legislation at Columbia University, New York.

"Q. Did you take additional work after your work at Columbia?

"A. Additional work at Columbia?

"Q. No, after Columbia.

"A. No, my last three-years' graduate work at Columbia.

"Q. At Columbia University?

"A. That is right.

"Q. After graduating and taking your Master's degree, what line of work did you take up and follow?

"A. I was probation officer in Judge Ben Lindsey's juvenile court.

"Q. That was the noted juvenile court in Denver, Colorado?

"A. That is right, sir. I was later chief probation officer, and at a later time referee after Judge Lindsey's juvenile court became also the juvenile and family relations court after legislation which I had initiated in the Colorado Legislature."

Mr. Combs: We will skip to page 1012, the bottom of the page.

"Q. Can you tell us when you first had a connec-
3968 tion with the Welfare and Retirement Fund?

"A. I was first asked to act as a consultant, technical consultant on a part-time basis, in December of 1947.

"Q. That was not the present Welfare and Retirement Fund but one under the previous contracts?

"A. That is right.

"Q. And the present Welfare and Retirement Fund, as I understand, originated with the collective bargaining agreement which became effective March 5, 1950?

"A. That is the 1950, present fund, that is right, sir.

"Q. During the period 1947 or 1948, when you first went

with the old fund of the trustees, organization, what work did you do?

"A. Before that I was, during the years, through the end of 1934 until December, last of November in 1937, or beginning of December of that year, I was Assistant Secretary of the Treasury, appointed by President Roosevelt.

"Q. What was the period that you were Assistant Secretary of the Treasury?

"A. Three years, 1934 to 1937 — I beg your pardon — that's right, 1937. And upon being made Secretary I was assigned the United States Public Health Service. It was put under my jurisdiction. Also I was, just prior to
3968 my being made Assistant Secretary of the Treasury, President Roosevelt had appointed me on a special technical committee of citizens — appointed 21, I think there were — about, that was in May, 1937, about three or four months before I became Assistant Secretary of the Treasury — to work with programs of what eventually became the Social Security legislation, which we worked very hard on that. And on my becoming Assistant Secretary of the Treasury, I was then transferred from this general citizens' committee to the very special government technical committee which worked with the Cabinet committee, and sometimes represented the five Cabinet members of that committee in discussions and planning the entire Social Security program which became the Social Security Act.

"Q. What did you do with planning and working out the Social Security Program, or the program that became the Social Security Act of the United States and its procedure?

"A. I worked constantly with the small committee that was working under the chairmanship, mostly of Mr. Arthur Altmeyer, who was later the Social Security Commissioner and First Chairman of the Social Security Board.

"At the same time I was working on those committees, of course, I had this direct responsibility of developing the Public Health Service into a modern, progressive health

program. And the first thing that we attempted there was a nation-wide health inventory, which was more than
3970 18 months and became quite outstanding in its report of that 18-months' work — it was quite outstanding in the progress, the index it gave for progress in the whole nation-wide health program.

"After that survey was completed — it was nearly two years — and presented to the President, the Social Security Act was in effect. President Roosevelt asked me to become chairman of his inter-departmental committee to coordinate all the health and welfare activities of the Federal Government, not only among the new activities in carrying out the federal work but to work out the most helpful — and I was pleased with the word — and the simplest and most practical arrangement with the states in developing this new program."

Mr. Rowntree: Pardon me, Mr. Combs. May I ask what the theory is in respect to the pertinency of this?

Mr. Combs: Yes. This is background information. Counsel has brought up that the pensioners who draw benefits from the Welfare Fund were compelled to picket and to engage in activities at the risk of losing their benefits and also it would be pertinent as we read on the question of the lawsuits that were filed by the trustees of that fund, that he has raised, both goes to those things only and I am skipping between that, I am just reading the trustee's qualifications. That is a foundation to what she says.

3971 Mr. Rowntree: Well, can't we get a little more to the point on the pensioners' committee?

Mr. Combs: Oh, I am going to.

Mr. Rowntree: In the first place, and on the second point, we do not contend, since we have failed once, that the bringing of the cases was conspiratorial action, it was merely a fact with which we had to contend in this field, regardless of the reasons behind the bringing of the lawsuits, that was

a factor confronting our people as to abiding by the national contract.

Mr. Combs: Right. But we don't concede that what you have said is necessarily factual, it is a question of evidence, and I think we ought to know exactly what it is so the Court can evaluate it for whatever you are claiming.

Mr. Rowntree: Isn't it true, this is a very simple fact, that the suits were brought on certain dates —

Mr. Combs: It is not quite that simple. The question that I will go into is why these trustees filed the suits and how they were filed and where they were filed. I am not going to read, if counsel is driving at that, I am going to keep on reading, I am laying a foundation and I think I will get right to the facts.

Is counsel still contending that these pensioners were compelled to picket at the risk of losing their benefits?

Mr. Rowntree: We contend that they were pick-
3972 eting in pensioners' committees organized, committees organized by Mine Workers' districts, presidents of the International Union, district presidents that were not under these trustees.

Mr. Combs: Right, but I think you have brought in the picture if they did not picket that they were apt to lose their benefits, at least there is a threat there.

Mr. Rowntree: A threat not from the trustees but from the union.

Mr. Combs: Well, I am going to show that the union couldn't have done anything about it. I think it is pertinent.

Mr. Rowntree: Well, I agree with you that the union should not have any ability to carry out the threat.

Mr. Combs: And that is what I think this testimony will go to.

Mr. Rowntree: It seems to me we ought to be able to boil it down. You have beat me once on this thing after three years of work, and I am trying to keep out as much as pos-

sible, but certainly the organized pensioners in the field is a fact.

Mr. Combs: That's right, but I want all the facts.

Mr. Rowntree: It is a means by which the International Union has spread the National Bituminous Coal Wage
3973 Agreement.

Mr. Combs: Exactly.

Mr. Rowntree: We agree to that.

Mr. Combs: No, I am not agreeing to that. That is your contention, of course, I am not agreeing with that. That is what you are claiming, this is in refutation of what you are claiming.

Mr. Rowntree: We are not claiming that the trustees are doing —

Mr. Combs: (Interposing) But the trustees are the ones that rule on that. It will come to the question that you are talking about, it will be asked, there will be evidence.

* * * * * * * * * *

"Q. You told us you first became connected with the Welfare and Retirement Fund of 1947?

"A. That is right.

"Q. When?

"A. In December of 1947.

"Q. Now, in what capacity did you become connected with the Welfare and Retirement Fund or the trustees administering that fund?

"A. On that date?

3974 "Q. Yes, ma'am.

"A. As technical consultant in developing, to help in the development of some of the programs that they had in mind in welfare and health matters.

"Q. Was that on a full-time basis?

"A. No, sir, part time.

"Q. Technical consultant on a part-time basis?

"A. That is right.

"Q. How long did you continue in your work as a technical consultant?

"A. Until the spring of 1948, sir.

"Q. In the spring of 1948 the collective bargaining agreement or the welfare provisions of the contract of 1948 were in effect. What did you do then?

"A. Then I was appointed director by the trustees."

Skip the next.

"Q. The 1948 trust fund was succeeded by the Welfare and Retirement Fund of 1950?

"A. That is right.

"Q. Have you continued as director during that 1948 fund and through the 1950 fund up to date?

"A. I have.

"Q. As director of this fund, what are your duties generally, briefly, as director?

"A. As director to see that we have, of course, first
3975 primary principle, have an efficient and able staff to work in the office and on the program; to develop procedures implementing the resolutions of the trustees authorizing benefits or in establishing eligibility requirements; carry on the day-to-day operations in connection with those programs, and see that the various staff members who are in charge of details of these various programs, that the work is going ahead smoothly and accurately.

"Q. How much have you had, or did you have, in the earlier days and continue to have today, with setting up the entire program?

"A. I had quite a part in it, I would say, sir, at least in the sense of helping to work out certain technical arrangements as the experience I had had in the federal and state government might perhaps be of help in developing the programs.

"I felt very strongly, of course, about the basic principles and policies for which the fund was created, or I wouldn't have been there even as a consultant or anything else. It

was aimed at developing further the conservation of human and economic resources in the interest of the public.

"That is what seemed to me of terrible importance, to have a tremendously important public interest involved.

"Q. Did you have any other trust fund of a like nature to guide you or did you people have to blaze a trail?

3976 "A. I beg your pardon?

"Q. Did you people have to largely blaze a new trail?

"A. We did indeed except in the sense that all of us who had cared about the public interest in the relations between management and industry had always tried to do certain things, but this particular thing was entirely new. It was really an uncharted way.

"Q. Who were the trustees of this fund at the time you became director?

"A. Senator Bridges, Mr. Van Horne, and Mr. Lewis."

Mr. Combs: We will skip to the question near the top of the next page, page 1017.

"Q. Did you become a member of the board of trustees?

"A. I was a member of the board of trustees in the 1950 contract named by the other trustees in the contract."

Skip down to the question.

"The record is already in here and shows you were named in the 1950 contract when it was signed?

"A. That is right."

Skip down to the bottom of page 1018.

"Q. You told us a minute ago that the trustees met four or five or six times a year. Where are these meetings held?

"A. In the offices of 907. There is a special room for the trustees, offices there, and they meet there regu-

3977 larly.

"Q. Are they attended as a rule by all three of the trustees?

"A. Yes, that is right."

Mr. Combs: Skip to the middle of the next page, 1019.

"A. Mr. Mitch, that is right. The minutes of the previous meeting are read and discussed, the action taken upon them, the group is given a full report by the counsel of all legal matters and the litigation that the Fund — against the Fund or the Fund is carrying through, and any developments of any legal nature which the trustees would not only be obligated to know about but would be interested in. After that report of counsel, the comptroller —

"Q. Before we leave that report of counsel, you said that counsel reports on various items in litigation. Does he report on the suits that have been instituted for the collection of unpaid and past-due royalties?

"A. Always, completely.

"Q. In detail?

"A. In complete detail.

"Q. Does he give the names of the companies?

"A. He does. Amounts.

"Q. Names of the companies, the amounts, and the courts?

3978 "A. That is right, and the state of the litigation.

"Q. And as the suits progress from time to time, does he make reports?

"A. He does.

"Q. Stating the progress of the various items in litigation?

"A. Yes, sir, every meeting.

"Q. When they are finally concluded, does he make a report?

"A. He does.

"Q. Do you people as trustees point out a particular company that happens to be delinquent in its payment of royalties and designate to him, to counsel, that he shall bring suit, or how is it handled?

"A. By resolution of the trustees, place him under the responsibility of following through on all delinquencies on which no arrangement can be satisfactorily made to

assure complete payment, and there has never been a case that has not been pressed to the very end on complete payment. And if it is, in his judgment, that is required, he is authorized to bring suit and immediately report at the next meeting on the status.

"Q. Do the trustees single out particular coal companies, say small ones, and designate that counsel shall institute a suit against this company or that company?

3979 "A. No.

"Q. Has that ever been done?

"A. No, not to my knowledge, sir, since I have been trustee.

"Q. Has there ever been any discussion by the trustees that you know of in meeting or otherwise that suits were to be instituted against particular coal companies for any other purpose than to collect the money that they owe?

"A. No, sir, definitely, positively no.

"Q. Has there ever been any movement, as far as you know, of the trustees to impose upon or work a hardship on any company?

"A. No, sir, none whatsoever.

"Q. And now you mentioned a moment ago with reference to the settlement, what about the attitude of the trustees with reference to giving away, to refusing to collect a part of the money that may be due under their signature on the contract?

"A. It is never permitted, sir.

"Q. What do you do with it?

"A. We continue until it is litigated in court.

"Q. Do you exert every reasonable legal effort to collect it?

"A. We certainly do.

"Q. Is that true regardleses of the company or the

3980 location?

"A. Regardless of the company or where it is or anything about it.

"Q. And Mr. Mitch, himself, is responsible for the handling of those claims?

"A. He has the responsibility. Of course, he has very remarkable assistants in it, but that is his personol responsibility, yes, sir.

"Q. He does, of course, have associate counsel or assistant counsel working under him or working at his direction?

"A. That is right."

* * * * * * * * * *

"Q. How have you handled the pension fund and in what way is it administered and to whom paid?

"A. The fund is administered by the administrative staff of the fund in conformity, complete conformity with the resolutions of the trustees authorizing the pension benefits. That means, of course, that we are responsible for seeing that the amount of the pension and the arrangement for payments both go through absolutely without any slip; that the eligibility of every applicant is fully — we are fully satisfied as to his eligibility and that anyone who is ineligible does not receive the pension. We have already au-
3981 thorized about and there are now being paid about 66,000 pensions.

"Q. You mean there are about 66,000 people, former miners?

"A. That is right.

"Q. Receiving pensions today?

"A. About that number. It changes every day, of course.

"Q. Ordinarily, how long do the payments of these pensions continue? Do they continue for life, until death?

"A. Oh, yes, they continue until death.

"Q. Are those pensions in a uniform amount per month? I mean is there a difference in the rate of pension to a former miner who lives in Pennsylvania, or Ohio, than one who lives in Tennessee?

"A. No, sir, they are all the same, in addition to the Social Security payment they may get.

"Q. And the fact that the pensioner receives Social Security, does that in anywise enter into his pension claim?

"A. No, sir.

"Q. Something has been said in the record, Miss Roche, that pensioners have at times been on picket duty lines where there was an organization strike or an organizational movement, perhaps, not strike but movement on foot by the union to organize a mine. Have the trustees ever at
3982 any time instructed or directed pensioners to be on picket duty?

"A. Never.

"Q. Have you heard of them being instructed or directed by the trustees or with the authority of the trustees to go on picket duty?

"A. Never.

"Q. Has there ever during all the time that you have been connected as a trustee been a rule or regulation that if a pensioner did not go on picket duty, his pension would be dropped?

"A. No, sir.

"Q. To your knowledge has anything of that sort ever happened?

"A. As far as the fund is concerned, never, sir.

"Q. Have you ever had any complaint by anyone that it has happened, if they refused to go on a picket line?

"A. No.

"Q. Nothing of that sort to your knowledge, and you have been there all of the time?

"A. No, sir.

"Q. And you do attend, you have said, practically every meeting of the trustees?

"A. I attend every meeting. I make no exception.

"Q. You have here in front of you, I see, a number of files that I want to pick up. Something was said in

3983 this record that benefits depended upon membership in the union of the person who received such pension benefits. Is that correct?

"A. No, sir, it is not correct.

"Q. Has at any time since 1951 the trust fund of 1950 was established union membership been a requirement for pension benefits?

"A. No, sir.

"Q. Never?

"A. No, sir.

"Q. Has there ever been any action taken by the trustees since the establishment of the 1950 trust which would require membership with or affiliation to the union as a basis for benefits?

"A. No, sir."

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4006 VAL J. MITCH,

DIRECT EXAMINATION

(Mr. Combs read the questions and Mr. Rayson the answers.)

"Q. Your name is Val J. Mitch?

"A. Yes, sir.

"Q. Mr. Mitch, how old are you?

"A. I am fifty-five.

"Q. Where do you live?

"A. In Washington, D. C.

"Q. You are a lawyer by profession?

"A. Yes, sir.

4007 "Q. Are you in any wise now connected with the United Mine Workers of America Welfare and Retirement Fund?

"A. Yes, sir, I am counsel to the trustees of that fund.

"Q. How long have you been counsel to the trustees of that fund?

"A. Since its inception in 1950, on March the 4th, and

I was also counsel for a short time of the preceding fund.

"Q. The new fund that came into existence on March 5, 1950?

"A. March 5, yes, sir.

"Q. March 5, 1950?

"A. Yes, sir.

"Q. Do you have your offices in the same building in which the offices of the fund are located in Washington, D. C.?

"A. I do.

"Q. Do you have some associates or assistants to work with or under your direction?

"A. I have five attorneys, and an auditing section of several employees, plus secretaries.

"Q. Plus stenographic help and so on?

"A. Plus stenographic help.

"Q. Do you give full time to your position there as counsel of the trustees?

4008 "A. Yes, sir.

"Q. And have during all of this period of time?

"A. I have.

"Q. Would you state in just a general way, in not too much detail, what your duties are in this position.

"A. My duties are to advise the trustees on any and all legal matters affecting the trust; the drafting of resolutions providing for benefit programs to be authorized pursuant to the trust instrument as the trustees may desire; protect the trust against — and the trustees — against all lawsuits which may be brought against them; to file lawsuits against coal operators who are delinquent in their payments to the fund as required in the trust instrument."

Mr. Combs: I skip over to the top of page 1069.

"Q. Mr. Mitch, do you attend the meetings of the trustees?

"A. Yes, sir, I attend all meetings of the trustees.

"Q. Has that been true from the inception of this 1951 trust?

"A. With the exception of one meeting that I missed because I was absent from the city necessarily. Only one meeting have I missed.

"Q. Do you recall when it was that you missed attending a particular meeting?

"A. It was in October of 1950.

4009 "Q. And aside from that, you have attended all meetings since you became counsel to the trustees?

"A. I have, yes, sir.

"Q. Are all three trustees present at these meetings?

"A. All of the trustees are present unless they are ill. That's happened on one or two occasions. And after the death of one of the trustees, and until the successor was appointed, there were only two duly-constituted and effectively operating trustees and they were present at every meeting during that interim."

Mr. Combs: I will skip to the bottom of page 1070.

"Q. Mr. Mitch, what, if any, reports do you make at these meetings of the board?

"A. Well, I report on any matters which are requested by the trustees. Such as the drafting of resolutions or the rendering of any opinion only as requested. But I submit all regular routine. I report on litigation, the status of litigation against the trustees and litigation in which the trustees are parties plaintiff.

"Q. What type of litigation do you have, or have you had over this period of time, in which the trustees were parties plaintiff?

"A. In which they are parties plaintiff?

"Q. Yes.

4010 "A. Those are suits to collect delinquent royalties which are unpaid by operators signatory to the contract.

"Q. Will you explain how it is determined and by whom

it is determined when suits shall be instituted to recover delinquent payments by signatories to the contract?

"A. I submit to a routine adopted by the trustees. The comptroller, after he determines that a company is delinquent over a few months, and after he had communicated with the operator reminding him of that fact and seeking payment, on failure to receive the proper payment the account of those operators are referred to the legal department, to me, and I assign them to one of the attorneys on my staff to make an examination of the account, to gather all of the facts and circumstances, and to communicate with the operator concerned to seek payment.

"Upon failure after all possibilities of recovery in that manner are exhausted, lawsuits are filed upon receiving a recommendation from that counsel on my staff that he can go no further. And at the next trustees' meeting I report that fact.

"Q. Who makes the final determination of whether or not a suit shall be filed against the particular delinquent operator?

"A. I make that decision.

"Q. As a signatory to the contract and after you
4011 get this report from your staff, you make a decision?

"A. I make the decision on prior authority from the trustees.

"Q. But before instituting suit against a particular operator, A, B, C, or D, who is a signatory to the contract, do you get specific instructions from the trustees as to that particular suit or are you acting under general instructions?

"A. I act on general instructions. I get no instructions from the trustees as to any individual, specific operator.

"Q. In what area do you direct these suits to be filed? In any particular state, or how do you select where the suit is supposed to be filed?

"A. Wherever the coal operator may be or wherever the coal operator's office may be, whichever is desirable. What-

ever state that is in, may be in, that is where we file the lawsuit.

"Q. Do you make any distinction between the type of the operator, that you might large or small, if those words have a meaning, or do you take all operators who become delinquent and cannot work out a settlement?

"A. We make no distinction whatever. They are all signatories to the contract and the trustees have the fiduciary obligation to collect these trust monies which
4012 belong to them and that is the way we approach it.

"Q. Do you make any discrimination as to the area where you will start the suits?

"A. I make none.

"Q. After these suits are instituted, you say you do report to the next meeting of the board of trustees, to the trustees themselves?

"A. I do; yes, sir.

"Q. In detail?

"A. In detail.

"Q. Explain, please.

"A. I give the name of the company, the address, the amount that we have estimated to be owing the trustee fund, the number of months that the company has been delinquent, and recital of the efforts made by the legal department to have that operator pay without the resort to litigation.

"Q. Mr. Mitch, after having instituted these suits for amounts that accorded to the best information you have is the amount owing, do you find errors in the amount sued for from time to time?

"A. Yes, sir.

"Q. And how and what do you do?

"A. We do find errors.

"Q. Explain, please.

"A. The operators frequently do not report to the
4013 trust fund as required by the contract and in the trust instrument as they are required to as to what

their tonnage may be. We are then put to the task of ascertaining from any official source available to us what that tonnage may be and what that debt may be. Many times we find that after we file these lawsuits based on the best possible information we can obtain, that it is not correct and it is only after we proceed through the lawsuit that we ascertain the true amount owing by that operator.

"Q. When you do ascertain the true amount, do you proceed in the suit for the amount so ascertained?

"A. We do; yes, sir.

"Q. What about settlement of these cases after they have been instituted?

"A. There is no settlement made.

"Q. Suppose that the operator against whom you brought suit is a signatory to the contract offers to pay it, would you accept the payment after suit is started?

"A. If he would offer to pay the full amount, we would; yes, sir, absolutely.

"Q. Is time given on occasion, extended time for catching up these delinquent payments or making payments?

"A. If the operator will agree to pay the full amount found to be due and owing, the trust fund after we are satisfied that that is the true amount, we will enter
4014 into agreements providing for a time payment, but it must recognize that the operator must pay the full amount to the trust fund.

"Q. Do you give any discount or reduction or do you feel as trustees it is your duty to collect the entire amount due under the contract terms?

"A. It is the duty of the trustees to collect the entire amount, and we make no discounts, no reductions. We have never done it.

"Q. Do you make sometimes a concession of interest when they make a settlement?

"A. If an operator will agree on this method of paying out over a period of time without resort to litigation and will recognize the full amount of the debt after it is veri-

fied, we will not charge him interest unless he defaults on the agreement, in which case the interest is assessed.

"Q. If he made an agreement to pay it over a period of months or years, you will waive the interest providing he meets those installments?

"A. If he meets the installments regularly, interest is waived during that period. If he defaults, interest is assessed.

"Q. But in the settlement you make with him, does it always cover the full amount that is owing for royalties?

"A. Always the full amount, yes, sir.

"Q. Have you ever in your experience in hand-
4015 ling these delinquent accounts use the lawsuit method for the purpose of driving some person or operator who was signatory to the contract out of business?

"A. We have never had that in mind. We only have in mind our obligation as trustees that we must seek out this money which is rightfully — which rightfully belongs to the trustees under the trust instrument under which they must operate.

"Q. That has been the policy?

"A. That is the policy.

"Q. And the policy in all instances?

"A. In all instances.

"Q. Mr. Mitch, in this record something is said about union membership or membership of a claimant or an applicant for pension benefits or for other benefits must be a member of the union in order to receive such benefits.

"Will you tell me the policy that is followed by the trustees and yourself as the legal officer?

"A. The trustees will follow a policy that any employee of an operator signatory to the agreement who is qualified under the trustee regulations is eligible for trust fund benefits. Union membership has nothing to do with it.

"Q. So far as you know, has that procedure been followed without variation during the entire life of this trust fund of 1950?

4016 "A. To my knowledge it has been."

Mr. Combs: We turn to page 1078, in the middle of the page.

"Q. Mr. Mitch, at any time during the period that you served as trustee, which is the life of this trust, has there been any effort made by any of the trustees that you know of to put into effect a requirement that a person must be a member of the union in order to receive benefits from this fund?

"A. No effort was ever made. There have been no discussions on it.

"Q. Now, Mr. Mitch, something has been said in this record about pensioners being on a picket line when the United Mine Workers of America may be on an organizing drive somewhere, a mine, and that the pensioners of the Welfare Fund, those receiving pensions, have been active on the picket line. Has there ever been any requirement that you know of that they must be on the picket line or required to be on the picket line in order to receive or to continue to receive, if they are pensioners —

"A. There have been no requirements whatsoever. There has been no discussion of it in my presence.

"Q. Ever been any requests by the man chosen by the union, Mr. Lewis, that any such rule be put into effect?

"A. None whatsoever.

4017 "Q. Has there ever been any rule of that sort? You say there has never been anything done that you know of?

"A. There has been no rule.

"Q. Has anyone ever been penalized that you know of by his pension being reduced, if already on the pension fund? Or other benefits taken away from him or reduced because he did not participate on a picket line where there has been an organizational drive?

"A. No, sir."

* * * * * * * * * *

4027 GEORGE H. LOVE,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

* * * * * * * * * *

4050 CROSS EXAMINATION

By Mr. Rowntree:

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4080 Q. I am not asking you about The National Coal Policy Conference, I just wanted to ask you if you did make those statements.

Mr. Combs: I wonder if counsel would let me see it. I have never seen it.

A. I don't know who made them but I am not arguing with them.

Q. You don't know who made them?

A. It is a pamphlet made up by the organization. I don't see any quotations of mine there.

Q. Doesn't it attribute the statement to you?

A. I don't think so.

* * * * * * * * * *

4087 The Court: All right. Mr. Love, at the time that you were spokesman for the coal operators in dealing with the United Mine Workers, did you at that time represent operators who had different coal seam characteristics?

The Witness: Oh, very much, yes, sir, and even within our own company, sir, where some 20 mines operated at that time, or 21 mines, we had varying conditions from very thin seams in Kentucky to very thick ones in Northwest Virginia, we had strip coal, we had deep coal, so we represented all types of producers, producers of very thin coal and strip coal, for example, so the answer is we have all sorts of categories of mining conditions in the group that we represented.

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4090 P. B. C. SMITH,

a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rayson:

Q. Would you state your name, please?

A. Smith, the initials are P. B. C.

Q. Where do you live, Mr. Smith?

A. Knoxville.

Q. What is your business?

A. I am president of Intermountain Coals in Knoxville, which is a coal sales company.

Q. Is that an operating company in any way?

A. No.

Q. Is the Intermountain Coal Sales Company a sales agency for Consolidation Coal Company?

A. For some properties they have here in Tennessee, yes.

Q. Does it sell coal for Consolidation from any
4091 other mines operated by that company?

A. No.

Q. Now, what properties does Consolidation have in this area, that is, in Tennessee?

The Court: I missed something. Is the witness talking about Consolidation or Tennessee Consolidated?

Mr. Rayson: No, Consolidation Coal Company.

The Court: All right.

Q. That is, I take it, the company of which Mr. Love is chairman, is that correct?

A. That is right. We represent the mines out on the Tennessee Railroad near Devonia, Tennessee, that were formerly known as the Moore Coal Company properties.

Q. When did they come into the picture as far as the Consolidation Coal Company is concerned?

A. When Pocahontas Coal Company was merged into

Consolidation Coal Company, which was about November the 30th, 1956.

Q. Would you just speak a little louder, Mr. Smith. And when had Pocahontas Coal Company acquired these properties?

A. The properties were acquired in Moore Coal Company on December the 15th, 1953, by the Pocahontas Fuel Company.

Q. Thereafter your testimony, as I understand—

A. (Interposing) What is that?

4092 Q. Pocahontas was merged into or was acquired by Consolidation in some way?

A. November 30, 1956, why, Pocahontas Fuel was merged into Consolidation Coal Company.

Q. Did you handle the sales from these Moore properties from and after the time they were acquired by Pocahontas?

A. Effective with December 16, 1953, the first day of their ownership.

Q. All right, sir. What has been your experience in coal sales work?

A. Well, when I was born my father was in coal sales work and indirectly, I guess you would say, all of my life. Now, directly and actively since about 1932, '33, a few years after I got out of college, and I had been with, first, the Southern Coal Company of Memphis, Tennessee. I worked in their Birmingham, Alabama, office and was with that company or its successor companies in various capacities up until July 1, 1951, when we formed the Intermountain Coals, which I am now president and have been since then, Intermountain being a wholly independent sales company that is owned, well, all of the stock is in the hands of the active executives of the company.

Q. All right, sir. You say you have been, that you have headed that company since its formation in 1951?

4093 A. That is right. Prior to that I had been everything from office boy to president of the Southern Coal Company and its successor companies, sales.

Q. Now, in your experience in selling coal, have you sold coal to the Tennessee Valley Authority?

A. Since they first bought coal, that's when the Tennessee Valley Authority first came into being, why, among the things they acquired was the Wilson Dam Steam Plant down in Alabama and they ran some and we sold coal, Alabama coal to them back there in the mid-'30s and ever since there has been a TVA buying coal, why, we have participated in the sale of coal to them.

Q. Do you recall whether or not TVA operated from steam plants during the late '40s?

A. Yes, they had the Watts Bar Steam Plant and they had several, which was the one they built themselves, they acquired several steam plants from privately owned utilities that they had gradually acquired as the TVA came in and, well, there was a plant in Nashville and Memphis, the Hale's Bar Plant outside of Chattanooga down here, the Ocoee Steam Plant near Ocoee, Tennessee, the Watauga Steam Plant up in the Virginia-Tennessee, line up there, and I think that pretty well — I may have overlooked some, but they were all plants that were in existence before the TVA bought them.

Q. Do you know whether any of those plants that
4094 you have named are still in operation?

A. Practically all of them have been junked with the exception of the Watts Bar Steam Plant, which they built themselves.

Q. Do you know whether it is in operation at this time?

A. No, it has been in operation, it's purely on a stand-by and I guess has been since about 19 — I don't exactly, but say '56, '57, something like that, April, '57, probably.

Q. Mr. Smith, tell us as of right now what are the operating steam plants in the TVA system in the eastern end of the system.

A. Well.

Q. Where are these plants located?

A. Starting at the top of the map, so to speak, up at

near Rogersville, Tennessee, there is the John Sevier Steam Plant, that is up in Upper East Tennessee, then coming down the river you get to the Kingston Steam Plant there at Kingston, Tennessee, and, of course, next is Watts Bar, which is a stand-by, then you come down to Widow's Creek just outside of Chattanooga.

Q. Is there a new plant in the East known as Bull Run?

A. Yes, but it is not in operation yet.

4095 Q. All right, sir. All right. Then what are the plants, what are the other plants continuing in the westerly direction of the system?

A. Well, you go from Widows Creek over to near the Tri-Cities there in Alabama, Colbert, and then on around to the Johnsonville Steam Plant, Johnsonville, Tennessee, and then up where the Tennessee River dumps into the Ohio there where you have the Shawnee Steam Plant and then coming up the Cumberland you have the Gallatin Steam Plant and, of course, you also have the Paradise Steam Plant, which is in either — I guess Ohio County, West Kentucky.

Q. All right, sir. Is there any one coal field that is so situated that it could sell coal competitively to all of these presently operating TVA Steam Plants?

A. Any one?

Q. Coal field.

A. Coal field origin?

Q. Yes.

A. No, not to my knowledge.

Q. Now, where, for example, where are your mines located, say on the Tennessee Railroad, what county in Tennessee are they located?

A. Anderson County.

Q. What is the closest steam plant to your mines?

A. It would either be Kingston or perhaps the new

4096 Bull Run, as the crow flies.

Q. What about John Sevier, how is it from the standpoint of distance?

A. We don't even have any rates to John Sevier.

Q. Well, how far would John Sevier be from your mines?

A. I am not very good.

Q. As the crow flies?

A. I am not very good at figuring that. Oh, it would be, I guess as the crow flies, it wouldn't be too far, about maybe a hundred and twenty miles or 140, something like that.

Q. All right. Now, to which of these steam plants could you sell coal from the old Moore mines competitively?

A. From the Moore mines, why, the Kingston Steam Plant, the Watts Bar Steam Plant when it was in operation and, oh, perhaps Bull Run Steam Plant — no, I couldn't sell to the Bull Run Steam Plant because we don't have a Southern Railroad rate there.

Q. What do you mean by that, you don't have a "rate" in there?

A. Well, they have transportation rates of various origins to all of these steam plants and at Bull Run the steam plant local on the L&N, Southern hasn't built in and while our mine is located on the Tennessee Railroad that
4097 is a short line connection with the Southern Railroad and we have no Southern Railroad rate to the Bull Run Steam Plant, in fact, the Southern Railroad doesn't even serve the Bull Run Steam Plant as of now.

Q. What about John Sevier, can you get your coal there?

A. Well, that is served by the Southern Railroad but is out of our district, so to speak. As a matter of fact, I guess there may possibly be a rate up there but there's certainly not a Section 22 rate up there.

Q. Do you have any idea what the rate is in amount?

A. From Moore mines?

Q. Yes.

A. Why, I never bothered to look it up because we just didn't have it.

Q. Are you saying —

A. (Interposing) I'd say it is so far out of line with the minimum rates there off of Southwest Virginia, South-

ern Railroad origins and the so-called Middlesboro-Jellico origins on the Southern Railroad that we just wouldn't think about it.

Q. All right, sir. Let's take these steam plants one by one and I will ask you what coal fields normally serve the various plants that the TVA has.

For example, which coal field serves the John

4098 Sevier?

A. That coal for John Sevier comes primarily out of Southwestern Virginia, mostly from Southern Railroad and short line connections.

Q. Any other field that is competitive with that area?

A. There is a rate from the N&W, or there was, I presume there still is from N&W origin in Southwest Virginia.

Now, the other coal that would move to John Sevier would be of the so-called Middlesboro-Jellico origin or origins off of the Southern Railroad, they would have to be off of the Southern Railroad to participate in the Section 22 rate.

Q. What about Kingston, what field serves the Kingston Plant?

A. Well, the farthermost one right now would be the Hazard field in Southeastern Kentucky over the L&N and then the Harlan field. The Jellico-Middlesboro-Pineville field and in Southeastern Kentucky, and in Eastern Tennessee. Then in the past, why, there has been some coal from Southern Tennessee that has moved by barge up to Kingston and in the past in emergencies there has been some West Kentucky coal or Western Kentucky coal that has moved in by barge to Kingston.

Q. All right, sir. What about, is there a field over

4099 near Monterey?

A. Well, yes, and that is currently shipping some coal there. The major supplier for that field, I understand is worked out, or at least it was so announced in the paper and that, of course, is the minimum Section 22 rate to the

Kingston Steam Plant, is off of Tennessee Central Railroad out around Monterey.

Q. Mr. Smith, you have mentioned coal fields in Tennessee, or you have described them as being the Jellico area and in Eastern Tennessee and in Anderson County where your own mines are located, in the Monterey area and in the Southern Tennessee area just a few miles west of Chattanooga, I presume you are referring to there?

A. The Southern Tennessee area?

Q. Yes.

A. Well, it would be Sequatchie, Marion and Grundy County.

Q. All right. Now, are —

A. (Interposing) Where the old NC&St.L. used to be, now the L&N.

Q. Are there any other coal fields in Tennessee that you know of?

A. No, I don't know of any other.

Q. Is there anything west of this Southern Tennessee field that we are talking about in this case, or the
4100 Monterey field, whichever one might happen to be the most westernmost?

A. Within the State of Tennessee?

Q. Yes, sir.

A. No, sir, nothing unless somebody has found something that a lot of us overlooked, but I don't know of it, not to my knowledge.

Q. What about Widows Creek, what fields have served Widows Creek?

A. Well, the nearest field is the Southern Tennessee field, which is Marion, Grundy and Sequatchie County, and currently there's some coal moving in there from Alabama, I understand, mined off of the Sand Mountain Plateau down there that is right near it, and then coal can move in there from Illinois, Indiana, Western Kentucky by barge, and I understand the L&N origin of Western Kentucky mines can move in there by train.

Now, from up in our area, by "our area", I mean up around Knoxville, the Upper East Tennessee producing district, why, to my knowledge, at least there has never been any coal from that area that has ever moved to Widows Creek. We are just not competitive with the home suppliers down here.

Q. All right, sir. What about Gallatin and Johnsonville and those plants?

A. Well, Gallatin has to rely on — that's all rail
4101 coal, as I understand it, and has to rely on Western Kentucky rail coal and I guess it would be possible for some of these Southern Tennessee mines to move their coal up there because they have a direct rail connection. Now, whether that is competitively possible, I don't know.

Q. And what about the Paradise and Shawnee Plants?

A. Now, Paradise, the coal supply for Paradise comes right from the property, it is mined practically on the property there.

Q. The property owned by whom?

A. It is mined by an operation that comes right out of the operation, goes right into the plant.

Q. Do you know if there are any other steam plants of that character in the TVA system?

A. No, that is the only one I know of right now. They are getting ready, I started to say double the size of that, even a little greater than double the size of it.

Q. What about Shawnee, what field supplies that?

A. Oh, Illinois, Indiana, Western Kentucky.

Q. Now, Mr. Smith —

A. (Interposing) The same applies to Johnsonville.

Q. Those fields supply Johnsonville?

A. (Witness moves head up and down.)

Q. Are any of these plants or, rather, are all of
4102 these plants situated to be served by barge?

A. Let's see. Of course, Paradise is a mine mouth, there's no barge setup there, I guess you could possibly work out in an emergency some time, but the John Sevier

Plant has no facilities for barge unloading, the Kingston Plant has rather emergency facilities which they have used from time to time, but to my recollection they haven't used for, oh, seven or eight or nine years, something like that, and Gallatin, I believe, does not handle barge coal, but all of the rest of them are set up for barges, that is, Widows Creek, Colbert, Johnsonville, Shawnee and Kingston, of course, if they need it, and I imagine this Bull Run, the new Bull Run Plant there in East Tennessee near Clinton could handle barge coal if they saw fit to.

Q. Is the cost of transporting coal by barge less or more than the cost of transporting it by rail?

Mr. Rowntree: I object, your Honor. That calls for a conclusion. I think there are all sorts of variations.

Mr. Rayson: Well, I think the witness would be in a position to explain whatever variations there are that might exist.

The Court: Allow him to answer and make any explanation.

Q. Will you explain to us, Mr. Smith, the relative aspects pertaining to the cost of barging coal into the TVA
4103 system as compared to transporting into the system by rail?

A. Well, historically, why, it is cheaper by barge if you are moving things in volume and all of that, and I say by and large, in my opinion, at least, barge transportation is cheapest or the cheaper, anyway.

Q. Where is the barged coal bound from, what inland coal mines transport much coal by barge?

A. Well, of course, you have your river bank mines, which are by barge, then you have inland mines that can by combination of rail and barge participate in barge movements or a combination of truck-barge, you can move it possibly by rail or truck to a transfer facility where it is transferred to the barge, there are some several situations around the country.

Q. Do you know how TVA evaluates transportation charges by barge?

A. Oh, in their invitations to bid, why, they have a rule of thumb in which they say it will be evaluated for the purposes of making awards or comparing bids at, I believe it is two mills per ton mile, plus 25 cents a ton.

Q. When have you last had any contracts with the TVA from the Consolidation properties in Tennessee?

A. The last shipment we made, which was a contract, was, I believe it was November the 30th, 1962. Let me make sure of that now, '62, yes.

4104 Q. November 30, 1962. Could you tell us whether those shipments were on a term contract or whether that was coal sold on the TVA spot market?

A. Well, it was coal originally sold under a 5-year term contract, sold for shipments to start, as I recall, about November 30th or December 1, 1959, I guess it was.

Q. You say that was a 5-year contract?

A. That's right. Starting, I believe it was November the 30th, 1959, or maybe with January 1, 1960, but right in there, and it was a 5-year contract and under the terms of the TVA's 5-year contracts, why, at the end of three years, or at least when we bid on this one and were awarded it we were up for renegotiation at the end of the three years.

Q. Did yours come up for renegotiation at the end of the 3-year period?

A. Yes, at the end of the three years they compared your then contract price with the average of other term contracts coming into that plant at that particular time and if the difference is such, I have forgotten just exactly what it is, but say a cent a million difference or something like that, why, either party has the right to re-open the contract and then renegotiate the remainder period of the contract or cancel it.

Q. What happened in your case?

A. Well, they asked us to come down to renegotiate
4105 and we renegotiated and they told us upon what

basis the contract could continue and it represented a rather substantial reduction so far as we were concerned and we just decided that we would just have to cancel the contract.

Q. Mr. Smith, at what plant, to what plant were you sending that coal?

A. Kingston Steam Plant.

Q. Were your costs or was the cost of that contract to TVA more or less than the other contracts at that time, was the cost of the Consolidation contract?

A. It was.

Q. More or less?

A. It was more, I mean that's the reason why we didn't continue to ship on the remaining two years, because their average cost in the term contract at Kingston as of that time was substantially below our price and we didn't feel that we could justify reducing our price down to the price so that we could continue.

Q. Have you offered any coal to the TVA since then?

A. No.

Q. Now, prior to that 5-year contract what had been your previous experience with TVA, had you had another 5-year contract?

A. No, I don't believe we ever had another 5-year contract, we had other term contracts.

4106 Q. Well, did you have a term contract that Consolidation acquired in 1956?

A. Let's see now. I got a list of these things. Be all right if I look at them?

Mr. Rayson: Is that all right?

A. I am getting old, I can't remember them. In '56 and '57 when Consolidation acquired the properties in '56, why we had negotiated a contract with the TVA.

Q. When did you make that contract?

A. Oh, we started shipping on that in May of 19— no, we had completed that before Consol took it over, we started shipping on that in May of '56 and completed it in October

of '56 and then we made another contract there in December of '56, which ran for 13 months, and, of course, Consolidation Coal Company had the properties then.

Q. All right, sir. Let's go to the contract that you entered into in May of 1956. You say you negotiated that contract?

A. Well, the TVA came to us and asked us to furnish them with this coal at what was then a very attractive price. They were in a tight for coal at the Kingston Steam Plant and offered us and offered everybody else the same basis on the cost per million and we at that time had our Trimore, we had two mines on the Moore property at that time, the Moore and the Trimore Mine and the Trimore Mine had been shut down.

4107

Q. When had it been shut down?

A. Oh, we shut it down back in — well, let's see, I think it was June the 1st, 1954.

Q. Now —

A. (Interposing) We shut both Moore and the Trimore down June the 1st, 1954.

Q. How does the TVA normally buy its coal? Does TVA normally negotiate contracts for the purchase of coal?

A. No, it is always by invitation and public bid opening but in cases of emergency which prevail at this particular time they were, I think under the rules and regulations or procedures of the TVA Act, they are authorized to negotiate purchases, both spot and contract.

Q. All right. How long a contract was this that you negotiated at that time?

A. Well, it involved re-opening this property and we contemplated experimenting with a continuous miner in the thing and we agreed that, I believe, as I recall it was either six months or 50,000 tons, whichever came sooner, and we had the privilege of not delivering, it developed that our mining conditions and all were such that the continuous miner did not prove practical as we went right ahead and shipped for approximately six months and I think we

shipped approximately 50,000 tons, but we did find
4108 that the miner didn't work.

Q. Do you know what the circumstances were that caused TVA to come to you to negotiate a contract at that time?

A. Well, it had been on an accumulation of things through, I'd say pretty well to the latter part or half of 1955 and the early part of 1956 the TVA's position, particularly at the Kingston Steam Plant, got progressively worse so far as their coal in storage for their burn was concerned, they had several long time or long term contract supplies that for one reason or another had failed to deliver in line with the original contract and then, too, in on the summer of '55 we, that is, our company and the Southern Railroad and the private utility in the Southeast got together to work out a freight rate on coal to a given plant of this private utility that would permit that utility to eliminate natural gas at that plant, that that plant had been 100 per cent on natural gas.

Q. Is this plant that you are talking about outside of the TVA area?

A. Oh, yes. Well, it was the Arcwrit Plant of Georgia Power Company, and in return for a rather substantial freight reduction or, as a result of a rather substantial freight reduction we were able to change the fuel at that
plant from natural gas to coal. The plant, I guess,
4109 would consume three or four hundred thousand tons of coal a year, so there was a new market for coal from the Kingston basin, that is, from the same source of supply that Kingston had, and then, too, I think there was just a general pickup in all of the market along the various private utilities and Kingston got down to a very, very low storage, in fact, I think they claimed it was as low as one week's supply.

Q. What is the normal supply that TVA keeps there, do you know?

A. Well, I think now they have about — well, I think they

try to keep 90 to 100 days, at least they were trying to in those days.

Q. Do you know if TVA was taking any other steps at that time besides negotiating with your company to relieve that situation?

A. Well, I think they diverted some existing contracts, that is, coal moving under existing contracts to other plants, they could move into Kingston by barge and stuff like that. I am sure they diverted some of those coals from other plants to Kingston.

Q. Do you know whether or not TVA purchased any spot coal for the Kingston Plant at that time?

A. Well, they were purchasing spot all of the time on the same basis.

Q. Did that have any effect of the price of coal

4110 at Kingston?

A. We started selling them what coal we were producing there, why, they started offering us spot orders in April of 1956 and they were buying spot coal from everybody that would sell it to them at this, oh, I think the price figured about 23.350 cents a million or just below that.

Now, at that particular time, why, the reason I say, I understood it was 23.350 cents a million, why, if it got any higher than that, why, it made other coal fields competitive, for example, Western Kentucky. The Western Kentucky field at 23.50 cents a million at Kingston, above that price the Western Kentucky coal field could move into Kingston, so that was the explanation of the twenty-three and a half, and that was all spot until they worked out of their difficulties.

Q. Is that an extremely high price for spot market coal?

A. What?

Q. I say, is that an extremely high price for spot market coal?

A. Well, it was the highest that it has been down there, *do* my knowledge.

Q. How long did that situation last?

A. Well, they had pretty well dug out from under it by the end of 1956.

4111 Q. What did you do after your 6-months contract expired at the Trimore Mine, did you offer any further coal from that mine to TVA?

A. Yes, we offered it to TVA and received an award. I believe the shipments to start in December of '56, a 13-month award, in which we agreed to ship to TVA a total of 5,000 tons of coal per week and it was our option as to whether this coal was to originate from our Trimore Mine or our Moore Mine. It was purely our option. The quality of our Moore coal is a little superior to the quality of our Trimore coal, at least as of that time, and on the basis of analysis records that TVA had, so we bid a separate price on each mine and a separate analysis which we, in effect, bid the same evaluated price as far as TVA was concerned.

Q. How much coal were you obligated to sell?

A. A total of 5,000 tons a week.

Q. What were the prices that you made?

A. The reason for that was that we at that time did not have the Trimore operation developed as fully as we would have liked to and the Moore Mine was running and we didn't want to fall down on this 5,000 tons a week obligation so we reserved the right to fill in from the Moore Mine as the needs offered themselves, which we did, although over the period of the contract we shipped by far most of the coal from the Trimore.

4112 Q. What price did you sell that coal to TVA for?

A. Well, it started out on the Trimore part of it at $3.90 F.O.B. the mine, and the Moore part at $4.10 F.O.B. the mine.

Now, as I explained a minute ago, the difference in that price would be the difference in the quality.

Q. All right, sir.

A. Then April the 1st, 1957, there was a wage increase, so each contract was raised five cents per ton to $3.95 and $4.15.

Q. How did those prices compare with the negotiated prices you had at Trimore?

A. Well, the negotiated price was $ .47.

Q. To what do you attribute the difference in the price of your negotiated coal?

A. The law of supply and demand.

Q. What was the supply and demand at the time you did the second contract?

A. Well, it was much more ample, there just had been no supply to speak of during the negotiated part and by the time we bid on this contract, why, there was plenty of supply and we were just following the market as a matter of fact, yes, as a matter of fact, I think that was the highest price of an award, that contract we were awarded in December of '56 for the 13 months, as I say, was
4113 the highest priced award among the successful awards, so we were following the market, but we were right at the top.

Q. How did you arrive at the price that you bid to TVA at the time of those December of '56 contracts?

A. Well. Now, this is December of '56?

Q. Yes, sir.

A. Well, just by following the information that you you could get on the spot market, that was more or less a matter of public record as to what they were buying spot and, well, for example, after this, oh, after May of '56, why, the so-called spot market went down each month right on up until the end of the year there and I just used my best judgment based on what the going spot offers were and that I knew about that it would take to get the business, I just did get enough.

Q. Did you take those contracts at below cost of production?

A. No, no, not to my knowledge. I am not a production man and the contracts were taken in my name but it was a producer's authorization authorizing my bid and I had

the authority of the producer and to my knowledge they were not taken below the cost of production.

Q. Did you take them with the intention of making a profit, Mr. Smith?

A. I certainly did, yes, sir.

Q. Do you know whether the profit was made?

4114 A. To my knowledge, I would think so, yes.

Q. All right, sir. Did you bid either of those contracts or any other contract in collusion or collaboration with any other coal company?

A. No, sir.

Q. Did you ever discuss any of these prices with the United Mine Workers or John L. Lewis or anybody like that?

A. Lord, no.

Q. Did you arrive at that purely as a matter of your own knowledge after a conference with other people in Consolidation Coal Company?

A. That's right.

Q. All right. What did you do with respect to the TVA market after the expiration of that 13-month contract?

A. Well, that brings us up to, oh, '57 through the end of '57. Well, we sold no more coal to TVA after the completion of that contract on December 31st of '57 until November of '58, and, incidentally, at the completion of that contract we shut the Trimore down, Trimore Mine down. We had offered it on subsequent contracts but our price was too high to sell, so we shut it down and in the meantime, of course, the Moore Mine we had moving in under contract to a private utility and in the year of '58, why, Trimore was down and we had, as I recall it, was a 250 or 300,000 ton contract over a 12-months period going

4115 to a utility and the annual tonnage was completed on in early November or about mid-November.

Q. 1958?

A. That's right.

Q. Did you sell some coal to TVA at this time?

A. Well, in the meantime we had negotiated a long-term contract with this private utility to start January 1, 1959.

Q. All right, sir.

A. But the contract we were then shipping on in '58, we had completed our annual tonnage some month to six weeks prior to the original contract time, so we had the problem of either shutting the coal mine down until January 1st for a period of a month or six weeks or finding some place to put that tonnage on the spot market, which the latter, of course, is what we chose to do. We sold some of the spot to Duke Power and, oh, most anybody else we could rather than shut the mine down.

Q. Did you sell any?

A. And we sold to TVA some 10,000 or 11,000 tons between November 18th and December 7th of '58, and then we sold them another 4,000 tons between December 24th and January 3rd of '59 on the spot market.

Q. In selling any of that coal on the spot market
4116 at that time, did you seek to get the regular market for spot coal?

A. We got the regular market for spot coal.

Q. How did you go about determining what the market was for spot coal at that time?

A. Well, you knew what the spot market was.

Q. How often does TVA buy coal on the spot market?

A. Oh, every week.

Q. Do you know whether it publishes a list of all of the offers that are made on the market?

A. At the end of every month they publish such a list.

Q. Do you get those?

A. Oh, yes.

Q. Those publications in your office?

A. Oh, yes. It is generally distributed.

Q. All right. Then I take it you did sell some coal on the spot market in the latter part of 1958?

A. Yes, between November '58 and January the 3rd of '59, I sold a total of about 15,000 tons over that period.

Q. All right. What was your next sale on the TVA market?

A. The next sale was a contract award, which we discussed to start with.

Q. Is that the contract that you obtained in the
4117 latter part of 1959?

A. That's right.

Q. At what price did you obtain that contract?

A. $4.05.

Q. From what mine?

A. Well, it was the Moore Mine that worked out in April of 1959 and in the meantime we had Trimore, which had been shut down January the 1st of '58. It was re-opened in April of '59 and this contract that we started shipping in December of 1959 to TVA was from the Trimore Mine because Moore had been worked out the previous April.

Q. In bidding that contract did you seek to get the market price for coal on the TVA term market?

A. Yes, and I think we certainly did, as a matter of fact, in order to get that contract we had to negotiate a reduction in the or help negotiate a reduction in the Southern Railway Section 22 rate at Kingston of 10 cents a ton.

Q. Did you have any other purpose in getting that contract in 1959 other than selling coal? And here I ask you if you had a purpose with respect to the Tennessee Railroad?

A. Well, we had prior to that time negotiated a long-term contract with a private utility which amounted to a life-of-the-property contract from this Trimore
4118 Mine. The contract started out on a certain annual tonnage with step-ups in succeeding years. We had dedicated our reserves to that contract. As of that particular time, why, the Tennessee Railroad, which was in receivership, was petitioning for abandonment and while we had this movement moving to Georgia Power regularly out there that movement was not sufficient to keep the Tennessee Railroad's head above water, so, as it was, it was

as much with the idea of helping out the Tennessee Railroad, that is, in increasing their revenue of freight, why, we put in an invitation and made a very conscientious effort to obtain this TVA contract so that instead of shipping maybe 250 or 300,000 tons from that mine that year over the Tennessee Railroad, why, we would ship maybe 500, 550, something like that.

Q. Was the continuation of the Tennessee Railroad a matter of importance to Consolidation Coal Company?

A. Well, that's the only way they could get that coal out of there and it was of importance to TVA because the coal basin around the Tennessee Railroad represented a substantial future source of fuel, it was important to Georgia Power because they had a long-term contract as a source of fuel from us and, incidentally, our, I mean our reserves were dedicated to the Georgia Power on this long-term contract in order to offer this tonnage to the TVA, why, we had to do it with their knowledge.

4119 Q. Well, does that cover then, Mr. Smith, all of the sales made by Consolidation Coal Company to TVA from about 1956 up to the present time?

A. To my knowledge. Now they may have sold some to some other division that I had nothing to do with. I don't think they have, I pretty well kept track of all of it. I see most of the TVA awards and most of the TVA bids at all plants. I attended all their bid openings ever since they have ever had one and to my knowledge this is about the only coal Consolidation had.

Q. Has it at any time been your purpose to drive down the prices on the TVA market?

A. No, sir, it has been the other way, if we could.

Q. How does the spot market in TVA normally compare as a matter of price with the term market?

A. Well, normally I would say it would run anywhere from a cent to two cents a million under the term market.

Q. What?

A. It just all depends on the typical market. Well, I

mentioned there when they were in a spot, why, they would have to pay as much for spot as they did for term, but in the normal run of events, why, there's usually a spread of anywhere from one to two cents a million.

Q. What is that in terms of mine price?

A. Oh, anywhere from 25 to 50 cents a ton.

4120 Q. Is one cent a million be to use roughly 25 cents?

A. That's right.

Q. Now, can you explain to the Court why this difference in price exists in the spot market and in the term market?

A. Well, the spot coal is something that you are just selling today, I mean this is my opinion, almost because you have to, you either want to balance out your sizes, perhaps you have got a coal mine there where 85 or 90 per cent of your coal is already sold, contracted and committed. You make a carbon size and you just got to sell it. If you don't move it, why, you don't have ground storage or something like that, you have got to put it on the ground or you have to put it in railroad cars. If you put it in railroad cars and don't run it you run up against a no-bill rule and you don't get empty equipment to continue to function, and so, say you have got 85 or 90 per cent of your production sold in other sizes, you have just got to dump that 10 to 15 per cent and continue to operate and balance out your operation to fulfill your commitment and then sometimes you will have, on a regular movement to a utility or an industrial plant or something like that, something will happen that that particular consumer has a breakdown, he has to hold up shipment for two weeks. You have sold that coal to him. When he goes to resuming shipments, why,

4121 you are committed to deliver them to him, so you can't go out and sell his coal for a long term or a month or something like that, you have just got the coal that has turned up for maybe a week or two unexpectedly. Well, you have just got to dump it or at least dispose of it to the best advantage possible and you almost have to

pick a new customer or a new outlet and you can't use it as developing future business.

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Q. Mr. Smith, I want to ask you some questions about the various different kinds of coal. First, let me ask
4122 you if, generally speaking, there is a difference in the coals that are found and mined in East Tennessee as compared to the coals that are mined in Western Kentucky?

A. Yes, rather substantial differences. The highest quality coal for the most mined in Western Kentucky is substantially below the basic East Kentucky, East — now, are you talking about East Tennessee?

Q. Yes, East Tennessee.

A. Upper or lower or both?

Q. Well, let's take Upper East Tennessee first.

A. Well, Upper East Tennessee, you get coals all the way up into 14,000 BTUs. The highest BTUs that come out of West Kentucky would be 12.5 or 12.6.

Q. What about in Southern Tennessee?

A. Southern Tennessee, on that ought to average around 13.2 to 3 as compared to tops of maybe 12.5 or 12.6 in West Kentucky and some of the Western Kentucky seams ought to get 12.6, in order to get 12.6 it has to be washed.

Q. Washed coal?

A. If it has to be raw it is down in, oh, the 11,000 to 11.5 bracket and some of this washed even goes down to, oh, like a Wash No. 12, I guess about the best you could get out of that is about, oh, about 11.5.

Q. What do you mean by "washed coal"?

A. Well, that's whereby mechanical methods, why,
4123 you improve, beneficiate the quality by removal of impurities and such as that.

Q. Is it accurate to say that in that process you wash out some of the ash and that sort of impurity?

A. Oh, yes. You get rejects or wash out some of the impurities and you can have your rejects as a result.

Q. In the Western Kentucky field is there a great market for unwashed coal?

A. As of now?

Q. Yes.

A. There seems to be in the utility market.

Q. How about in other markets apart from the utility market?

A. I wouldn't think so, no.

Q. Now, then apart from the differences in the quality of coal as reflected by the different BTU content of coal, does the sizing of coal have anything to do with the, say, the mine price of coal and the marketability of the product?

A. Well, yes.

Q. What are the different sizes of coal?

A. Well, you have, you can make lump, which is plus six inches or plus five inches, you can have egg, some people call it furnace, which is usually three to six inches in dimensions, 305 or something like that, and then you
4124 can have stove, 2 by 3, 1½ by 3, and nut, 1½ by 2, get down to stoker, which is usually a quarter by one or quarter by one and a quarter, and, of course, where you are loading stoker coal you screen out the result and that's minus quarter down, which is your carbon.

Q. Do these different sizes of coal command different prices on the market?

A. Yes.

Q. How do you go about sizing coal?

A. You screen it out. You take the mine run and it comes across the preparation plant and depends on the combination of sizes you are loading at that particular time, just manipulation of screens to one size, stays on the screen and the other size goes through the screen, if it's double screened, why, the coal goes through one screen and it has to be retained on another.

Q. Does the utility market offer a market for sized coal, such as lump or egg coal?

A. They take some what we call carbon or dust sizes, which is the last wheel in the peg, so to speak.

Q. Is that what is called resultant coal sometimes?

A. Well, it's the very last result because frequently you can call resultant coal, oh, anything from four or five inches down, you can have a straight mine run come in, scalp off of the 5-inch lumps and if you sell the 5-inch down
4125 then as one body or one product, why, that is commonly called 5-inch resultant and that can be any size that you see fit.

Q. Which coal commands the highest prices?

A. Well, that depends on the use and to a degree, to a degree the size. If you are talking about metallurgical coal, why, it doesn't matter what the size is because that is a certain chemical analysis specifications and if it happens to fit and that always commands a premium price.

Q. What is metallurgical coal?

A. Well, it is what goes to make the coke, which, in turn, is used to make steel.

Q. Can this metallurgical coal be used in utilities and steam utilities?

A. Oh, it could be.

Q. Does it have any peculiar value when it is used in the utilities?

A. Well, it's just lower ash and lower sulfur, as a result usually higher heat.

Q. All right, sir. Does it command its greatest price when it is used for the purpose of developing coke?

A. Oh, much greater.

* * * * * * * * * *

4126 Q. All right. What is the utility market, as you understand it, Mr. Smith?

A. Well, it is all of the generating plants of the country that burn coal or could possibly burn coal, that is, TVA Steam Plants, Duke Power, the Detroit-Edison, it's many that may be burning gas, oil, that might be converted to

coal on a competitive basis, it's where you convert coal to electricity and send it out by wire.

Q. Where you are selling coal to utilities, how does the coal price that is sold to those utilities compared to the prices of coal in other markets.

A. The utility market is your lowest market.

Q. Can you explain to us why it is the lowest market?

A. Well, for one thing they can burn a much wider quality of coal, in other words, particularly the size of these generating units have increased, why, their specifi-
4127 cations have widened and they are permitted much higher ash coals and lower BTU and things like that.

Q. Do you know how high an ash coal that the TVA can use?

A. I believe their—they could use, if they wanted to, almost 90 per cent.

Q. How high does TVA buy?

A. Oh, on the basis of their economics they figure somewhere around, I believe the top is around 16 per cent, although they do permit you to supply coal in, say, for instance, up to as high as 20 per cent but they penalize you on your evaluation above the 16.

Q. Is there any market that you know of that uses coal with that high an ash content?

A. In this general area, you mean?

Q. Yes, sir.

A. Not willingly and they don't, until they can catch up to it, I mean most of the other utilities have a little tighter specifications than the TVA has. For one thing, most of them, their generating plants, are somewhat smaller, the units, than the TVA and they don't have the elasticity of specifications that TVA has.

Q. Do you know whether this latitude that the TVA has with respect to *ash* content resulted in any coal being mined in Tennessee which were not theretofore marketable?

4128 A. Oh, yes. I think it has brought into production in Tennessee quite a bit of production that without

the, say the TVA market, just never would have been developed because, well, I mean you don't go in and open a mine and mine coal unless you at least think you have a market for it until the TVA came in the picture with these large plants and all that with rather wide specs, why, a lot of seams, particularly in East Tennessee that never had been considered as workable, became workable because of a place to put it at a price.

Q. Mr. Smith, did you attend a meeting of certain coal operators and the board of the TVA some time in 1958 or '59?

A. (Witness moves head up and down.)

Q. Do you recall what that meeting was about, what transpired at the meeting? Where was it, first of all?

A. As I recall, it was in the board room of the TVA in Knoxville.

Q. What occurred at that meeting?

A. Well, perhaps a little historically background would help, if I may.

Q. All right.

A. Since the TVA got into rather substantial buying of coal, why, and got into it more or less from the standpoint of — well, they were green at it when they first started and they were trying to find their way as to how to buy
4129 coal, protect the TVA's interest and still get adequate supplies for these new plants that they were putting in.

The coal operators were trying to get the business and it was a rather different type of volume buying and all, which a lot of us hadn't been accustomed, and in the beginning, why, there was a lot of cross currents on the thing and the TVA sort of thought maybe that coal operators were trying to take advantage of them and the coal operators knew good and well the TVA was taking advantage of them and gradually as the years or as time went by we tried sort of to get the two interests close together for mutual advantage, that is, improvement of procurement

policies and dissemination of information and more of a mutual help thing rather than all this rumor and whatnot that was running around and TVA was accused of a lot of things they didn't really do and the coal operators, I presume, were, too, and so, oh, almost from the beginning there had been various committees and I served as chairman of the TVA Committee of the American Coal Sales Association many years ago and prior to that time we had meetings down with Alabama operators with TVA trying to see if we couldn't get some mutually satisfactory arrangement under which the TVA could get adequate coal at a reasonable price and which the operators could serve that market at a reasonable profit.

Now, we finally therein — oh, I think there were several operators and sales company in for discussion of various procurement policies and procedures that then went on and we had some suggestions to make to the TVA and they had some suggestions to make to us. It was just another meeting just like that. I had been going to them since 1935.

4130

Q. Was Mr. Widman present at that meeting?

A. Yes, he was there.

Q. Do you know him to be a representative of the United Mine Workers?

A. Yes.

Q. Did he make any statement at the meeting?

A. He more or less was there as an observer but he did express the opinion, as I got it, or at least the impression of how they felt in Washington about the TVA and he mentioned that the reports they got from the various districts from the miners where they were beefing about the TVA and things like that, but he was there to make no suggestion or demands but rather to listen and if he did anything to try to help about the situation in whatever way was reasonably possible, his attitude on the whole was completely cooperative as far as the TVA was concerned.

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4161 Mr. Rayson: We desire to read the deposition of E. C. Hill, taken in a case pending in the District Court at Knoxville on August 24, 1962, and which is being read in this case pursuant to agreement of counsel. Is that correct?

Mr. Rowntree: That is correct.

Mr. Rayson: This deposition, your Honor, was taken by the plaintiffs in a case against the United Mine Workers by Mr. Rowntree's partner, Mr. Robertson, however, I will read a portion of the direct examination and continue on through the cross examination.

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4162 E. C. HILL

DIRECT EXAMINATION

(Mr. Rayson read the questions and Mr. Combs the answers.)

"Q. State your name.

"A. E. C. Hill.

"Q. What is your occupation, Mr. Hill?

"A. My title is Chief of the Coal Procurement Branch.

"Q. And your office is located in Chattanooga, Tennessee?

"A. That is correct.

"Q. How long have you held this position?

"A. Approximately six years.

"Q. What does this position consist of?

"A. My responsibilities are to direct the administration of the policies and procedures employed by TVA in procuring its coal requirements."

Mr. Rayson: Would you turn to Line 9 on Page 8?

This next question, your Honor, is with reference to the bid sheets which have already been introduced in this case by the plaintiffs and the computations which appear on those sheets.

(The reading of the deposition was continued.)

"Q. Were the computations of costs made by

4163 TVA in the ordinary course of business with a view of determining cost represented by each bid?

"A. Yes.

"Q. What are the principal factors in determining the cost of coal to TVA?

"A. TVA uses a formula to establish the destination BTU cost, which takes into account the prices of coal on the origin and any transportation or related cost from origin to our steam plant, and the quality of the coal.

"Q. Is the quality of the coal from an analysis furnished to you by the bidder at the time that he makes his bid?

"A. Yes. The bidder guarantees a specific quality for his coal in each bid.

"Q. And the total transportation cost, whether that transportation be paid by TVA or by the seller, is reflected in this BTU cost?

"A. It is reflected in the destination BTU cost determination."

Mr. Rayson: Skip down to Line 16.

"Q. Explain the difference between spot contracts and term contracts.

"A. We employ two basic types of purchasing procedures in obtaining our coal requirements. The first type, and the one under which we get the bulk of our coal

4164 supply, we call term contracts. These contracts cover periods of delivery of a maximum of six months, normally one to three years, but in some cases for terms of ten years or longer.

"The other type of program that we employ is the spot purchasing program. Under this program we are buying coal under a week-to-week basis and no contract awarded has a delivery term of more than four weeks.

"Q. Before we leave these award sheets, Mr. Hill, let me ask you this: Are these costs per million BTU figures TVA's computations taken from the information submitted by the bidder together with the transportation costs?

"A. Yes, they are.

"Q. When a bidder submits a bid, does he submit that bid for any particular plant or does TVA determine that according to its own best interest?

"A. Well, bids are submitted both ways. In the case of rail deliveries, the bidder would offer coal F.O.B. rail cars at origin, and then TVA would include the applicable transportation cost to any plants that the coal might be competitive.

"In the case of truck deliveries, the bidder would specify a particular plant to which the coal was offered — for which the coal was offered, and the transportation cost on such bids is always included in the bid price.

"In the case of barge deliveries, we receive offers
4165 both F.O.B. origin and destination.

"Q. Do the spot award sheets show the unsuccessful bidders as well as the successful bidders?

"A. Yes, they do.

"Q. Do the term contract award sheets show the unsuccessful bidders?

"A. No, the term award lists reflect only the contracts that were awarded.

"Q. I wonder if you would explain the difference there in your procedure?

"A. The reason that the term award lists do not reflect the total bids received in addition to awards is that term bids are publicly opened and all interested suppliers have an opportunity to be present at the opening, so we don't feel that it is necessary to distribute a list of bids in this type program. In the case of spot bids they are not publicly opened, they are received as sealed bids but they are not publicly opened, therefore, the bidders, interested individuals, don't have an opportunity to know what their competition may be under this program until such time as we notify them through the list of awards as well as the list of total bids received.

"So that's the reason for including the unsuccessful bids

as well as the successful bids in the award distribution on spot purchases."

* * * * * * * * * *

4166 (Thereupon, Mr. Rowntree read the questions and Mr. Combs the answers.)

"Q. Mr. Hill, is the TVA the largest coal buyer in the United States?

"A. To the best of my knowledge, we are."

Mr. Rayson: Turn to Line 3, Page 21.

(Mr. Rayson read the questions and Mr. Combs the answers.)

"Q. Mr. Hill, how did TVA's total coal receipts currently compare with the total coal receipts for, say, the year 1950?

"A. It is apparently greater.

"Q. Do you have any figures which, for instance, would show the total tonnage purchased by TVA in, say, 1950 as compared with 1959 or 1960?

"A. I have some records here to show total receipts by TVA in 1951 and each year thereafter through 1960. I am talking about calendar years. In the calendar year 1951 TVA received 1,968,000 tons of coal.

"Q. Is that a receipt figure or burned figure?

"A. That is a receipt figure. In the calendar year 1960 TVA received 18,986,000 tons of coal.

"Q. Has this increase been brought about as a result of construction of new steam plants during the 1950s?

4167 "A. Yes, that's basically true.

"Q. Any additional factors?

"A. Well, the reason I said it is basically true is that our construction of major steam plants began in about 1948 and has continued even up to date, up until the present date. The addition of new steam plants and their tremendous load requirements in power generation that has been placed on the TVA system is responsible for this tremendous increase in coal requirements.

"Q. Mr. Hill, is the spot market an advantageous market for coal producers?

"A. I think it is.

"Q. I wonder if you could explain how it is advantageous?

"A. Well, the spot market permits a number of smaller companies to participate in the coal supply for the TVA system that would not be able to participate in the term coal market. Some of the reasons for this is that we don't require performance bond on the spot purchases whereas we do require it on all term purchases. Another factor is that some of the smaller suppliers have limited coal reserves and are unable to commit themselves for extended periods for production. Another factor which both the small suppliers and the large suppliers can benefit from the spot program is that it can permit them to take advantage
4168 of seasonal changes in the markets for coal. Under the spot program we will buy quantities of carbon sizes or screenings and the coal supplier can sell the more premium sizes to other markets since these markets are in short duration and the supplier doesn't have to commit himself on the spot sales for periods which would extend beyond his expectations of production for the more premium size markets.

"Q. Does this afford a market for a large producer to possibly sell his, what is sometimes termed as distress coal?

"A. It provides a market for either the small or the large producer for that purpose.

"Q. Is it true that the TVA is an integrated system?

"A. If you mean by the word 'integrated' that the various plants are connected together by transmission lines and the various load centers in the TVA area are connected by different transmission lines, then it is an integrated system.

"Q. By that I take it that the steam plants, regardless of where they are located, are all part of one system?

"A. That is basically true.

"Q. And is the most economical loading of the system determined by TVA computers system under Mr. Martin Hochdorf?

"A. The question is pretty broad in scope. Mr. Hochdorf, together with others in TVA, jointly established
4169 what is a most economical loading of the system. Certain information, as I understand it, is supplied to Mr. Hochdorf and his staff to be inserted into our IBM computer machine to help to establish this most economical loading.

"Q. Does the TVA have a policy with respect to the percentage of its total coal receipts that are to be bought on the term market?

"A. Our board of directors established the policy some years ago that we would buy not less than 75 per cent of our total coal requirements on the term contracts. This doesn't mean that we are buying on a 75 per cent. Our actual purchases on the term basis amount presently to about 88 per cent total receipts.

"Q. Does this mean that the current spot receipts would amount to approximately 12 per cent?

"A. That's correct.

"Q. Does a bidder on the term market have an option as to the length of term for which he may bid?

"A. Within defined limits. As I said earlier, we specify in our invitations to bid for term coal that we will not consider a term of less than six months. We prefer offers of terms of one to three years which we so specify in the invitation, but we do give the bidder wide latitude in specifying what term is most desirable for them.

"Q. Does a bidder on the term market also have
4170 an option within limits as to the amount per week or per month of coal that he will furnish?

"A. Yes. We specify that we will not buy under a term contract less than 500 tons of coal a week or less than a total quantity of less than 25,000 tons. We also state that we reserve the right to limit any purchase to not more than

10,000 tons a week, but within these limits the bidder has flexibility in what quantity he may offer.

"Q. Are invitations to bid on the term contracts made at regular or irregular intervals?

"A. Term bids are taken at irregular intervals, usually. Usually we buy term coal about two or three times a year.

"Q. Is this true with respect to the spot contracts?

"A. No. Our spot purchases are made regularly on a week-to-week basis throughout the year. We issue invitations to bid on spot coal each month under these invitations which are usually issued about the last week in a particular month and which reflect the amount of spot coal we would like to buy during the succeeding month. This type of process is continued throughout the year."

Mr. Rayson: On Page 32.

CROSS EXAMINATION

Mr. Rayson: This is cross examination.

"Q. Mr. Hill, you have testified that TVA obtains
4171 its coal by term or spot awards and I think you have also mentioned that these awards were made on the basis of competitive bids. Does TVA on occasion negotiate contracts for the purchase of coal?

"A. Only in the event of emergencies.

"Q. Has TVA negotiated contracts for purchase of coal?

"A. In 1955, the latter part of '55 and early 1956, as I recall, we got into some emergency conditions as related to the coal supply for Kingston. We did negotiate some purchases at that time. None of the purchases covered delivery terms of more than six months.

"Q. Has TVA purchased any coal on an emergency basis since that date?

"A. No, it has not.

"Q. Had it done so prior to that date after 1950?

"A. Only insofar as it was necessary to obtain prompt supply for some of the very small plants in the TVA

system. An example, the Nashville Steam Plant which has a storage facility to carry only three or four days' supply.

"Q. What conditions existed in 1955 at Kingston which necessitated your negotiating contracts for purchase of coal?

"A. Very low inventory necessitated the emergency purchase of coal. Our inventory at one time got down to a level of only a little over 100,000 tons, which repre-
4172 sents only about a week's supply or slightly more than a week's supply.

"Q. Did you at that time undertake to resolve the emergency to any extent by the purchase of spot coal?

"A. We had the spot program existing at that time but we were not receiving adequate supply under that program to fill the immediate need.

"Q. You did continue the spot program during that time?

"A. Yes, we did.

"Q. Did you undertake to increase your spot coal purchases with respect to Kingston at that time?

"A. At that time, as I recall, we were buying about all the coal that was offered to us, whether it was under the spot program or under negotiated purchases.

"Q. Did this have any effect on the price of the spot coal at Kingston?

"A. Well, prices always related to supply and demand. Our demand was apparently greater than the immediate supply at that time so the price definitely was affected by this factor.

"Q. What were the price variations at that time on the spot market, roughly?

"A. I am not sure I can give you the exact variation. We did pay up to about 23½ cents per million BTU
4173 for spot coal at that time and it has been down to a level of 18 cents or so before then, so that means in terms of price per ton a difference of $1.25 a ton or thereabouts.

"Q. Over what period of time did the price increase from 18 cents to 23½ cents?

"A. I couldn't tell you specifically without reviewing the record.

"Q. Was it a relatively short period?

"A. I think that it spanned a period of about a year.

"Q. How long did that emergency situation continue at Kingston?

"A. We were buying coal under the emergency conditions for a period of about six months, as I recall.

"Q. During that time did you develop your stockpiles at Kingston?

"A. We did raise our stockpiles, our stockpile at Kingston, through the purchases during that period, yes.

"Q. From a low of seven days' supply, what supply did you develop by reason of these purchases?

"A. By reason of those purchases and other term contract purchases, the storage was raised to a level of about 90 days, something like that.

"Q. What supply does TVA like to keep at its major steam plants?

"A. We like to maintain a storage of 60 to 90
4174 days' supply at all of our plants.

"Q. Are you able to state whether or not the increase in the price at Kingston had any effect on the price of coal purchased at your other plants?

"A. I couldn't say specifically that it did have a direct effect on the price at other plants, no.

"Q. After you arrived at the 90 days' supply of coal at Kingston, did you curtail your purchases there to any extent?

"A. We had to build this inventory and during the same period we were buying coal to satisfy the requirements of the plant, so that when the inventory had been restored to a level which we considered satisfactory we did have to reduce the purchases that we had been making for that plant.

"Q. Do you know whether or not during this period there appeared to be an increase in the number of companies offering coal to TVA?

"A. Yes, there was an increase in the number of companies offering coal to TVA for the Kingston plant.

"Q. Were these both large and small companies?

"A. Yes, to my recollection.

"Q. Did you ship coal to Kingston during this period from coal fields that would not normally serve the Kingston plant?

"A. We did during that period, as I recall, ship
4175 some coal from Southeast Tennessee to Kingston, and earlier supply to the Kingston plant, and I believe we may have shipped a little West Kentucky coal to Kingston during that period.

"Q. Are you referring to West Kentucky or the West Kentucky Coal Company?

"A. I am referring to the West Kentucky coal field.

"Q. Was that coal which had already been purchased by TVA which in any event TVA had the right to ship where they pleased?

"A. Well, as coal at TVA had the right to ship to any plant it pleased.

"Q. Would the coal you shipped to Kingston from Western Kentucky and Southeastern Tennessee normally have been competitive in Kingston?

"A. It had not been.

"Q. At the price at which you were buying spot coal at Kingston during that period, how did the spot market compare pricewise with the term market at Kingston?

"A. I think during the period of the emergency the two got to be about the same price.

"Q. Is that an unusual situation?

"A. It is abnormal. Normally spot purchases are made at prices 15, 25 cents a ton lower than term prices.

"Q. Are you able to explain why that normal condition exists?

4176 "A. Well, I think that the reason for that differential is that we are buying an assured supply under the term market which requires a dedication of production for a longer period of time and which, in many instances, covers the total mine production of a particular supplier; whereas in the case of spot purchases we are buying for short periods of delivery and in many instances we are buying carbon sizes and resultants.

"Q. Would you say it is a fair statement to say that the obligations required under a term contract normally result in a higher price than spot coal offerings?

"A. That's been our experience.

"Q. Would you not agree that that's the experience of coal purchases generally?

"A. I would think it would be.

"Q. What contracts did you enter into on negotiated basis for Kingston during this emergency period?

"A. We entered into a number of contracts. I couldn't from memory give you that list.

"Q. Were there several?

"A. Yes, there were possibly a dozen.

"Q. Do you have any recollection as to the quantity purchased on negotiated basis?

"A. Not in total. I would say probably in the order of *our* or five hundred thousand tons?

4177 "Q. Do you know why your coal supplies were not adequate at Kingston at that time, that is, your normal coal supplies procurement policies?

"A. I have an opinion.

"Q. Express your opinion.

"A. It is my opinion that the coal supply during that period in late '55 and early '56, that coal supply was inadequate to fill Kingston's needs, was caused by the earlier entry of TVA into the market at Kingston for substantial supplies and that development by the industry of a rather substantial interest in this market, and because it was a new market I feel that in all probability that the industry

just overproduced itself to fill that particular market, and when the overproduction occurred all the suppliers wanted to stay in business, so there developed what might be classed as a price war among the suppliers to retain their position in supplying that plant.

"Another factor which may have resulted in what appeared to be an oversupply of coal, over available supply of coal, was the decline in other markets for coal such as the decline in the domestic market, decline in the usage of coal by the railroads, so that with the loss of other markets coupled with entry into particularly the East Tennessee field of new suppliers who were designing their production primarily for the TVA plant, we found the situation
4178 where there was just more coal available than we had need for and with this price war the level of prices got so low that a great number of the suppliers dropped out of the supply picture.

"So when this happened we went to the other side of the ledger, instead of having an oversupply there was a less than adequate supply. That's my feeling as to why there came about this oversupply at one time and less than adequate supply at another time, and then when we got into the emergency conditions, of course, the level of prices rose rather substantially from what they had been earlier.

"This encouraged a number of new suppliers to come into the field, and while we were restoring the inventory at the plants, at the same time keeping up with the burn requirements, we needed more coal than we would later need once the inventory was restored, so when this later development occurred the past level of coal then began to decline again to a point where it, I hope, has relatively stabilized itself.

"Q. You have stated that TVA is an integrated system, that is, its transmission lines are connected so that a plant is to be operated in accordance with the economies of the system. Now, what factors go into determining which plant is to be most economical at a given time?

"A. There are many factors that go into that determination. I will give you some of the more important ones.

4179 "Of course, the location of the needs for power is paramount and the economies of operation of one steam plant versus another, and the distance of that plant from the load center or the distance of those plants from the load center, amount of water in the reservoirs in the TVA system, the season of the year, as to whether those reservoirs may be increasing or decreasing, all these factors come to play in the determination as to just how the system will be loaded at any one time, any one hour.

"Q. Is the price of coal a factor in this determination?

"A. Price of coal tends to establish the cost of producing a kilowatt hour of electricity at each steam plant, so it is an important factor in the overall determination as to how the system will be loaded at any one time.

"Q. Is the price of coal a determinative factor?

"A. Not alone.

"Q. The particular built-in efficiencies of a plant would also be a factor, would they not?

"A. Very much so. In addition, the transmission losses between various plants for deliveries of power to the point where it was needed.

"Q. Could you state whether or not the normal fluctuations of the coal you purchase on the spot market would be a significant factor in the operation of your plants?

4180 "A. I doubt if you could say that it would be a significant factor.

"Q. What was the TVA's experience in 1956 or thereabouts with respect to operating its plants? Was it operating them on a partial basis or was it operating them on a full basis?

"A. It was operating them on a very heavy load factor. The reason for that, as I recall, was that the Atomic Energy Commission, which requires a tremendous amount of the power generated by TVA, had reached its peak at that time

and TVA was still in the process of building new steam plants to satisfy this need, and as I recall that year was not too favorable a year from the standpoint of hydro-generation."

The Court: What year was that?

Mr. Combs: That was 1956.

"A. So that the steam plants had to be operated at a heavier load than they would normally be under normal hydro conditions.

"Q. Is it fair to say that the Kingston Steam Plant during that period was running full blast?

"A. I think that's a fair statement.

"Q. What is the nature of the TVA system's steam plants with reference to the qualities of coal which it can use?

"A. Our steam plants which have been built since
4181 1948, have all been designed to use a very liberal quality of coal.

"Q. What do you mean by "liberal quality of coal"?

"A. Well, they have been designed so that it isn't necessary in most instances to wash the coal to make it satisfactory for our uses. They are also designed to use the smaller sizes, such as carbon screening, which may be available and they are designed so that certain coal seams that several years ago were not marketable at all can be utilized in our steam electric system.

"Q. How does TVA compare as a system with other utilities in this country in that regard?

"A. Well, it depends on the location of a utility. TVA is rather fortunate to be located in an area where there is an abundance of coal supply at relatively short distances from our plants. Now, other utilities, to the best of my knowledge, that have similar conditions, would have their plants designed somewhat along the same lines as ours. However, for utilities that are somewhat distant from the coal fields and would have to pay substantial transportation cost to get the coal to their plants, I think those utilities

would design their plants to use a more premium quality coal than would be TVA's requirements so that they wouldn't have to pay high transportation cost on incombustible material.

"Q. Would it be fair to state that of the signifi-
4182 cant utility systems that the TVA uses the lowest quality of coal now used in any markets?

"A. I am sure there are some power plants in the country that can use a poorer quality product than some of our plants, but as a system as a whole I would say probably TVA's quality requirements with respect to *caol* supply are probably a little more liberal than other systems.

"Q. Does that result in more coals competing for the TVA market?

"A. I think that it permits certainly wider varieties of coal to be able to compete for our market.

"Q. Do you have an opinion on whether that's had any bearing on the price of coal at which TVA or which TVA has purchased?

"A. I am confident that it has had a bearing on the price that TVA has to pay for its coal. It is certainly an important factor in that in order to build a steam plant that can use this poorer quality coal it costs more money for the initial installation in some instances, than it might be in the case if we used a more premium quality coal.

"Q. Mr. Robertson has asked you about the Clinchfield contract. To what mine does that relate?

"A. The particular contract that Mr. Robertson raised a question on covered coal to be supplied from the Clinch-
field Coal Company operation near Monterey, Ten-
4183 nessee.

"Q. What type or quality of coal is that?

"A. You mean with respect to some other coals?

"Q. Yes. Is it a low quality coal?

"A. It is a fairly low quality product.

"Q. Would that coal normally participate in a domestic market?

"A. In my opinion, its market for domestic sales is rather limited. One knowledge I have as to the sales of that particular seam of coal, which is limited primarily, that is, for domestic sales, is limited primarily to the house heating of homes in the general area which is served by the Tennessee Central Railroad, which pretty well parallels that line between Monterey and Crawford or Davidson, Tennessee.

"Q. I take it that you are generally familiar with the various coal markets in Tennessee, are you not?

"A. Generally.

"Q. Would you state whether or not the TVA, the Monterey coal, would have a market in this state?

"A. I am confident that it wouldn't have the volume of market that *is* has with the TVA.

"Q. Is TVA interested in premium coal or premium sizes of coal as such?

"A. For the steam electric system we are not encouraging the development of premium size production. We do buy a little heating coal for some of our buildings
4184 which demands premium sizes. It is rather insignificant in relation to our steam coal purchases.

"Q. Then do you not pay what might be termed premium prices for premium coal except insofar as it contains a higher BTU content, is that correct?

"A. We evaluate each of our bids for steam coal on the basis of the delivered heat content in that coal at our various installations, so the amount of heat that we can get out of the product is the prime factor together with the price and transportation cost in determining whether we buy a particular coal or not. We are not too interested in whether it is a premium size product.

"Q. What are the markets for premium coal other than domestic and rail?

"A. I think some smaller industries require the premium sizes, laundries, I think, require some specialized sizes sometimes, but in addition such industries as may have some

small steam requirements, they require usually, I think, a specialized product. TVA apparently is the principal market for coal produced in Tennessee. We are by far the largest customer for the production in the state and have been for several years."

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4185 Mr. Rayson: Would you turn to Page 26, please? We are dropping back to pick up a part of the direct examination of Mr. Hill.

DIRECT EXAMINATION

(The questions were read by Mr. Rayson and the answers by Mr. Combs.)

"Q. Mr. Hill, did you attend a meeting at the offices of the TVA Board of Directors in Knoxville on or about March 20, 1958, with certain representatives of coal producers and/or coal associations, coal producers associations, and a representative of the United Mine Workers of America?

"A. I did attend such a meeting.

"Q. At whose request was this meeting held?

"A. I believe the meeting was requested by one of the coal sales associations.

"Q. Would that be National Coal Association or some similar association?

"A. At that time it was the American Coal Sales Association which it later has been merged into the National Coal Association.

"Q. Who was present representing that association, if you recall?

"A. W. W. Bayfield represented the American Coal Sales Association.

4186 "Q. Do you recall who was present representing the United Mine Workers of America?

"A. Michael F. Widman representing the UMW.

"Q. Do you recall any other persons present at that meeting?

"A. Yes. There were a number of other people rep
senting the coal industry present. Joe E. Moody rep
senting the Southern Coal Producers Association was pr
ent. James R. Love representing Blue Diamond Coal Co
pany, B. T. C. Smith, representing Intermountain Co
Incorporated, Thomas J. Tarzy representing United El
tric Coal Companies and H. R. Rutstein representing Ki
patrick Coal Company were also present.

"Q. Can you give us the purpose for which this me
ing was requested by the coal association?

"A. It developed in the meeting that the representativ
of the coal industry wanted to suggest some changes in c
coal buying program in the procedures that TVA w
employing in its coal buying program.

"Q. Could you tell us what changes they were sugge
ing?

"A. There were a number of changes suggested, so
of them related to the term purchasing program and so
to the spot program.

"Q. Do you recall what these suggestions wer
4187 taking first the spot program?

"A. One of the suggestions related to the sp
purchases with the recommendation for limiting spot pu
chases to not more than 10 per cent of total receipt
Another related to the spot program was a suggestion fo
issuing separate spot coal invitations for bid to each plan
in which TVA was interested in buying coal rather tha
the system that TVA was then employing and still is em
ploying of issuing invitations for spot coal for a group o
plants.

"Q. Is that all on the spot?

"A. No. There was a suggestion for change in the dat
on which awards of spot coal would be announced. It de
veloped that we were already doing exactly what the indus
try was suggesting, so that one was easily handled.

"Another suggestion as related to the spot program
was to cancel out any undelivered coal on the spot contract

that is, at the end of its term, or have the supplier make it up at TVA's discretion. TVA was already following this practice, so that one was another one that the industry apparently didn't recognize was being followed. That's all.

"Q. Is that all with regard to the spot market?

"A. That's right.

"Q. Were there any suggestions there as to changing policy on the term market?

4188 "A. Yes. The suggestions as related to the term market kind of ran over to a degree to those, some of those made for changes in the spot buying program. Of course, we changed the spot total spot purchases, not more than 10 per cent of total receipts, and the term purchases were to amount to 90 per cent of total receipts.

"Q. In other words, as I understand that one, it would be a change of the policy from buying at least 75 per cent on the term market to buying at least 90 per cent on the term market?

"A. That's correct. Another suggestion that the industry offered as related to the term buying program was that neither party be permitted to change the schedule of deliveries under a contract. TVA had employed option rights to change the schedule by 10 per cent at its discretion on specified notice. In connection with the term purchasing program the industry also suggested that we issue invitations to bid separately for each plant for term purchases similarly to what their suggestion for spot purchases. Here, again, TVA follows the practice of issuing invitations on term coal for groups of plants or the total system because the system is operated as an integrated system.

"Another suggestion offered by the industry as related to the term program was that awards be announced within not less than 20 days after bid opening and that all

4189 recipients of awards be required to purchase a performance bond on the term contracts. The latter practice was already being followed by TVA and awards, of course, were being made as expeditiously as possible."

Mr. Rayson: Would you turn to Page 46, please, and we will resume the cross examination?

CROSS EXAMINATION

(The reading of the deposition was continued.)

"Q. Do you have, Mr. Hill, a list of the TVA system receipts of coal and the TVA system burn of coal for each year beginning with 1950 through 1960?

"A. I have it immediately before me for the period 1953 through 1960.

"Q. Would you read that into the record, please?

"A. All right. Suppose that I give you first the receipts for a particular calendar year and then immediately after it I will give you the total burn.

"Q. All right.

"A. For the calendar year 1953, TVA received 6,415,000 tons of coal. It burned 5,765,000 tons of coal. The difference went into storage.

"In 1954 TVA received 10,196,000 tons of coal and burned 9,301,000 tons. Here, again, our storage was increased.

"In 1955 TVA received 14,377,000 tons and burned 4190 14,210,000 tons. Storage was increased in that year.

"In 1956 TVA received 20,354,000 tons and burned 18,134,000 tons. Inventory was increased again. I might state here that the reason the inventory was being increased each year is that these plants, steam electric plants in the TVA system, were just being completed and we had to build a complete inventory.

"In 1957 TVA received 19,481,000 tons of coal and burned 17,672,000 tons.

"In 1958 we received 17,033,000 tons and burned 17,278,000 tons.

"In 1959 we received 17,808,000 tons and burned 18,815,000 tons.

"In 1960 we received 18,886,000 tons and burned 19,035,000 tons.

"Q. Do you have the quantities of coal which you have purchased from Tennessee during each of those years?

"A. Yes, I do.

"Q. Do you also have any information to show what percentage of Tennessee production that represented?

"A. Yes, I do.

"Q. Would you state those figures into the record, please, sir?

"A. In 1953 I don't have the percentage for that year showing a comparison of the total receipts by TVA
4191 from Tennessee versus the total state production. I
4192 do have it for each year thereafter but I can give you the TVA receipts in that year and the state production. For the other years I can give you a percentage figure.

"In 1953 TVA received 2,262,000 tons of coal from Tennessee. In that year the state produced 5,467,000 tons. That appears to be possibly 40 per cent of the state's production, maybe a little less. The figures on production of the state that I quoted were obtained from reports published by the U. S. Bureau of Mines.

"In 1954 TVA received 4,291,000 tons of coal from Tennessee, which is 66.7 per cent of the state's production.

"In 1955 TVA received 4,531,000 tons of coal produced in Tennessee, which is 64.2 per cent of the state's production.

"In 1956 TVA received 6,901,000 tons of coal produced in Tennessee, which was 78 per cent of the state's production.

"In 1957 we received 5,664,000 tons from Tennessee, which was 71.2 per cent of the state's production.

"In 1958 we received 4,763,000 tons from Tennessee, which was 70.2 per cent of the state's production.

"In 1959 we received 4,311,000 tons of coal produced from Tennessee, which was 72.9 per cent of the state's pro-
4193 duction.

"In 1960 we received 4,814,000 tons of coal pro-

duced from Tennessee, which was 64.3 per cent of the state's production.

"Q. Do you have any figures showing what percentage of your purchases which you obtained from East Kentucky and Western Kentucky for those years?

"A. Do you mean do I have similar figures for receipts from West Kentucky versus the total production of West Kentucky?

"Q. No, sir. Well, do you have figures showing the percentage of their production, that is, the field's production for those years, or do you have figures showing the percentage of your receipts that you obtained from those fields?

"A. I have on this particular tabulation of record which we keep for our internal use just a comparison of the TVA receipts from West Kentucky versus the field's production, not a comparison of our receipts from West Kentucky versus total receipts.

"Q. I see.

"A. I think I have that information somewhere in our records.

"Q. Would you read into the record the figures that you have before you?

"A. All right. For the same years as we covered
4194 earlier for Tennessee?

"Q. Yes, sir.

"A. All right. In 1953, again talking about calendar years, TVA received from West Kentucky 3,048,000 tons of coal. West Kentucky produced in that year 21,313,000 tons.

"In 1954 TVA received from West Kentucky 3,862,000 tons of coal, which was 17.2 per cent of the field's production.

"In 1955 we received 6,079,000 tons from West Kentucky, which was 23.1 per cent of the field's production.

"In 1956 we received 7,362,000 tons, which was 24.9 per cent of the field's production.

"In 1957 we received 7,871,000 tons from West Kentucky, which was 27.1 per cent of the field's production.

"In 1958 we received 7,243,000 tons from West Kentucky, which was 25.8 per cent of the field's production.

"In 1959 we received 7,635,000 tons from West Kentucky, which was 25.8 per cent, again, of the field's production.

"In 1960 we received 8,787,000 tons of coal from West Kentucky, which 28.7 per cent of the field's production."

Would you skip to Line 18.

"Q. Mr. Hill, you have stated that the TVA is the largest buyer of coal in the country. Do you know whether TVA is the largest consumer of coal in the country?

4195 "A. I think that we are the largest consumer of coal at the present time. U. S. Steel Company has consumed more coal than TVA in recent years, but they produce a rather substantial part of their total requirements from their own operations.

"Q. Are you familiar with the types of coal normally used by steel companies?

"A. Generally so. I was employed by the Tennessee Coal and Iron Division of U. S. Steel Company prior to coming with TVA.

"Q. How does the quality of that coal compare?

"A. Metallurgical coal from a quality standpoint would have to be considered substantially better than what is normally required for steam generation, steam electric generation.

"Q. Does anyone use the metallurgical coal other than the steel companies?

"A. Well, other industries use coal that is suitable for metallurgical purposes besides the steel companies.

"Q. Is that quality coal produced by mines other than captive mines or, that is, mines owned by steel companies?

"A. Yes. There's a substantial amount of that quality coal produced by private companies.

"Q. How does the cost or, rather, the price of that

4196 coal compare with the price of coal normally used by utilities?

"A. Generally, I think it would be higher.

"Q. Can you give us any idea of the difference in cost?

"A. Well, it will vary. It would not be of much value. I would say that generally it is higher priced coal than steam coal.

"Q. TVA divides its steam plants, as I understand it, into two general sections, the eastern section plants and the western section plants, is that correct?

"A. For our purchases we divide the system for convenience of staffing into a western and eastern section and that pretty well ties into the locations of the coal fields from which we receive our coal. For instance, we classify as the western section of our system, the coal supply is obtained from the Mid-Western coal field. What we classify as the eastern section of our system, the coal supply is obtained primarily from the Southern Appalachian coal fields.

"Q. That's always been the case and is now, I take it?

"A. That's right.

"Q. I believe that in the year 1955 or 1956, the spot term purchases in the two sections, that is the western and eastern sections were about equal, is that correct?

4197 "A. I really don't know. What you mean is the amount of spot coal bought for the eastern plants versus the western plants was about the same?

"Q. Yes.

"A. I don't recall.

"Q. Do you have any idea of the normal ratio of the quantities of coal bought by the two sections?

"A. Well, in general I would say that the amount of spot coal bought from the Mid-Western coal fields has been greater than the amount of spot coal bought from the Southern Appalachian coal field.

"Q. Is that because the demand for coal in your western section is greater than it is in the eastern section, that is, the need for coal?

"A. I think that has a bearing on it but I think a more important factor is that there has been more carbon sizes available from the Mid-Western field than from the Southern Appalachian field. In general, there are substantially more washer plants in the Mid-Western field than there is in the Southern Appalachian which assists in the production of these smaller sizes which have been made available to the spot market from the Mid-Western field.

"Q. What is carbon coal?

"A. What we classify and is generally classified in the industry as carbon sizes is anything below 3-quarter-
4198 inch top size. In other words, a half-inch by zero, quarter-inch by zero size product is generally classified as a carbon product.

"Q. Is the market rather limited for the disposal of carbon sizes?

"A. Yes, it is. The steam market, I think, is the primary outlet for that size production.

"Q. Is that normally a lower priced coal?

"A. Yes, because of the limitation on markets it is a lower priced coal than would be the larger sizes or a total mine production.

"Q. I take it you do not take into consideration the size of the bidder, whether he is large or small, in connection with the award of a given contract or spot term award?

"A. No. The size of the company is not a factor of consideration as long as the company is responsible from a financial as well as from a performance standpoint.

"Q. And simply, I suppose, you do not take into consideration whether a mine is operated by union labor or whether it is a non-union mine?

"A. No, sir, we do not.

"Q. TVA is required by law to have competitive bidding on its coal awards, does it not?

"A. The TVA Act specifies that all purchases for
4199 supplies for the TVA operations will be obtained

after competitive bidding with the exception of emergency and for certain repair parts.

"Q. And you feel that your procedures are fair to all bidders involved on the market, do you not?

"A. Yes, sir, we do.

"Q. They are not designed to give favoritism to any particular class of bidders, are they?

"A. No, sir.

"Q. Mr. Robertson has asked you about a recent contract awarded to Kentucky Oak Coal Company at the Bull Run Mine, and I believe that the record shows that this is a 15-year contract for 30,000 tons per week.

"Now, what sort of an invitation did TVA make which solicited that bid?

"A. First of all, the contract was not for coal from the Bull Run Mine.

"Q. I meant the Bull Run Steam Plant now under construction.

"A. The invitation under which this award was ultimately made was a formal advertised invitation to a prospective list of bidders, which included more than 100 prospective suppliers. Bids were formally opened in public and the award was made after the determination that it was the lowest bid received on satisfying a portion
4200 of the requirement at the Bull Run Plant.

"Q. Was this invitation such that a long-term bid was appropriate?

"A. Yes, it was. The invitation conditions were very clear that long-term bids would be considered for supplying a portion of Bull Run's requirements.

"Q. Do your invitations vary where you solicit term contract bids?

"A. I am not sure I understand what you mean.

"Q. Do you at times give invitations which would normally be responded to by shorter term bids than 15 years?

"A. Yes, we have issued invitations to bid in which we limited the acceptable offerings to no more than three years

in terms. We have issued other invitations in which we were interested only in longer term contracts, say, four, five years or ten years in length. Then we have issued invitations in which both short-term and long-term offers could be made under the same advertising.

"Q. Was this particular invitation limited in any way, that is, the one that resulted in the award of the Kentucky Oak contract in 1962?

"A. As I recall, that invitation specified that bids on coal for Bull Run would have to be of a longer term than one to three-year periods.

"Q. Was it limited as much as five years?

4201 "A. I believe that we did specify that no contract would be awarded for a term of less than five years for supplying the Bull Run Plant under that particular invitation. Now, under the same invitation we took bids on coal for, I believe, the Kingston Plant and the John Sevier Steam Plant, and for the two latter plants we would consider not only short-term offers but longer-term offers as well.

"Q. TVA, of course, has a number of long-term contracts, does it not?

"A. We do have a number of long-term contracts, yes, sir.

"Q. Have those contracts normally followed an invitation which was limited in the manner that the Bull Run invitation was limited?

"A. I'd say the majority of the contracts that we have active today which are of the longer term variety were awarded on the same invitations to bid as were some shorter term contracts.

"Q. TVA, however, is interested in securing bids for long-term contracts?

"A. We feel that there is a definite place in our coal supply for some longer term contracts. We look on our term contracts as the basic source of supply for filling our needs because of the tremendous investment in our steam electric system we feel that it is imperative that we

4202 have an assured coal supply which extends for pe
riods longer than just one to three years, at leas
we feel that we should have some portion of our total supply
under contracts for terms longer than one to three years

"Q. How long has the Hazard field been competitive in the TVA market?

"A. I believe that the Hazard field became competitive for the first time some time in 1959.

"Q. What factor resulted in that field becoming competitive?

"A. A change in transportation costs was an important factor. I wouldn't say it was the only factor.

"Q. The change in transportation cost was with respect to what we term as Section 22 rate, was it not?

"A. We were tendered a Section 22 rate in 1959 for coal deliveries to the Kingston Plant from the Hazard field. I don't recall whether there was a Section 22 rate existent prior to that time or not. I don't believe that there was, but I am not positive of that.

"Q. That, of course, is a rate available to a governmental agency, is it not?

"A. A Section 22 rate is available only to a government agency.

"Q. Such as the TVA?

"A. That's my understanding.

4203 "Q. Did TVA take any steps to secure the particular rate from the Hazard field to Kingston?

"A. The TVA, as a matter of good business practices, is interested at all times in developing means by which we can obtain a more economical coal supply, and as a part of that, our efforts in that respect, we are regularly discussing our coal supply with various carriers of coal to try to develop as economical transportation as is possible.

"Q. Did you not take certain steps with respect to that particular rate, that is the Section 22 rate, from Hazard?

"A. We had some discussions with the L&N Railroad, if that's what you mean by taking certain steps.

"Q. Well, the discussions, of course, were aimed at bringing about that rate, were they not?

"A. The discussions were aimed at bringing about a more attractive rate for that movement from the standpoint of TVA than was existent beforehand.

"Q. What was the rate beforehand?

"A. I really don't recall.

"Q. Mr. Robertson has also specifically pointed out in one of the exhibits a Section 22 rate from the Western Kentucky field to Widows Creek Steam Plant. Did TVA have discussions with the railroad with respect to that rate?

"A. Yes, we did.

4204 "Q. Did you advocate the promulgation or whatever occurs with respect to rates of that specific rate?

"A. We encouraged the quoting of a more favorable rate from West Kentucky to Widows Creek than was existent before the present quotations issued.

"Q. I believe that TVA is now advocating the retention of that rate before the Interstate Commerce Commission, is it not?

"A. Yes. We are making an effort to support the retention of that rate, yes, sir.

"Q. Did you take any steps with respect to that rate and its particular provisions, that is, the provision involved in that rate which results in the determination of the particular rate dependent upon the quantity of coal purchased from both Southern Tennessee and Western Kentucky?

"A. I don't believe I understood you, Mr. Rayson.

"Q. Are you familiar with the various qualifications involved in that Section 22 rate to Widows Creek?

"A. I think so.

"Q. Does it not depend in part on the quantity of coal purchased from both Western Kentucky and Southern Tennessee?

"A. There is a sliding scale of rates in that particular quotation and the rate is applicable at any particular time dependent upon the volume of coal that is moved.

4205 "Q. And did not TVA urge the adoption of t
particular formula?

"A. I think that the — let me state this: TVA was c
tainly favorable to adopting a formula which would per
the Southern Tennessee coal suppliers to have a part
establishing the applicable rates to that plant. I think t
L&N Railroad was possibly just as active as the TVA
an effort to try to protect the Southern Tennessee supplie
not do something that would arbitrarily be to their det
ment. We are anxious to reserve as much competition
possible from all fields of supply to any of our plants
we can.

"Q. Did the determination of that rate have any bea
ing on any decision TVA made with respect to enlargi
its capacity at Widows Creek?

"A. Well, without that rate, having the rates that a
listed in the quotation from West Kentucky having bee
made available, TVA would not have made a decision t
install an additional 500,000 kilowatt steam electric ge
erating unit at the Widows Creek installation.

"Q. What factors resulted in TVA's negotiation of it
Paradise Steam Plant contract with Peabody Coal Com
pany?

"A. That contract with Peabody for supplying coal t
the Paradise Plant resulted from a formally advertised
invitation similar to our other purchases for other plants

"Q. Does Peabody Coal Company have an ex
4206 ceptionally large quantity of coal near the site of
the Paradise Plant?

"A. I would say that it is a rather substantial quantity
of coal, yes. That is the largest contract we have ever
made.

"Q. Would any other company be in a position to com-
pete with respect to that particular plant?

"A. Would they be able to compete?

"Q. To compete on the same basis as Peabody did in
offering that bid?

"A. Other companies were afforded the opportunity to compete on the same basis as was Peabody to supply coal to a new plant in the western part of our system.

"Q. Would you say that Peabody had a *natrual* advantage with respect to the location of its coal field in offering that bid?

"A. I don't think that they had any more natural advantage than did some other suppliers who have substantial coal reserves in the Mid-Western field.

"Q. Is TVA interested in the efficient mining of coal?

"A. Since TVA is a substantial customer of the coal industry, we definitely are interested in the development of most efficient methods of mining, most economical methods of mining as can be employed.

"Q. Has TVA taken steps to urge producers of 4207 coal to increase their efficiency?

"A. Yes, we have encouraged our suppliers to employ the most efficient and economical systems available to produce coal for us.

"Q. Has TVA awarded contracts on condition that specific producers would improve their efficiency?

"A. We awarded two contracts in 1957 with this aim specifically in mind and the conditions were incorporated in those contracts to try to definitely encourage the suppliers to improve their productivity on a ton per man basis.

"Q. I take it that that was a policy determination of the TVA to enter into a contract of that character, was it not?

"A. Yes, otherwise it would not have been done.

"Q. You didn't do that in collaboration with any other coal companies, did you, or at the request of any other coal companies, did you?

"A. I am not sure that I understand what you mean.

"Q. You didn't put a condition in the contract requiring increased efficiency in collaboration with any other coal company, did you?

"A. We did not put in our invitation to bid a condition for bidding that a supplier had to improve its efficiency of

production in order to be considered for an award.
4208 no.

"Q. Did you not put in a provision something to that effect which would determine whether or not a contract would continue in force?

"A. The two contracts that we made in 1957 with provisions for providing for improved productivity specifically required some improvement for those contracts to run for long terms.

"Q. TVA would benefit financially from that improvement under those contracts, would it not?

"A. Not only would TVA benefit but the coal producer would also benefit.

"Q. But, in any event, that contract was not formulated as a result of any agreement between TVA and any other company, was it, or collaboration or understanding with any other company, was it?

"A. It was not consummated as a result of any agreement between any parties other than TVA and the particular companies who got the contracts. No coal companies had any part in the decision that TVA made to award the contracts with these special conditions, nor did any association, union or otherwise.

"Q. The United Mine Workers did not urge TVA to take any position or even discuss the matter with TVA did it?

"A. Not to my knowledge.

4209 "Q. What determines the amount of spot coal that you buy or ask for on a given invitation?

"A. Our spot program is designed primarily to try to gear our receipts of coal more closely to actual needs. Our coal burn at the various plants is not uniform day-by-day throughout the year. It varies, depending upon the load that is supplied to each plant and this, of course, is determined by many, many factors, including the weather. So we use the term contracting program to fill the primary supply and then in order to keep the peaks and valleys of

burn and receipts as low as possible we use the spot program to fill in these gaps.

"Q. What contract other than your contract with Clinchfield at Monterey do you have now with Clinchfield?

"A. We have a contract with the Clinchfield Coal Company for delivery of coal from their Moss No. 3 Mine, which is located in Southwest Virginia.

"Q. To what steam plant is that coal delivered?

"A. That coal is delivered to our John Sevier Steam Plant.

"Q. Do the Western Virginia mines have a favorable rate to that plant?

"A. The suppliers who originate their coal on the Southern Railroad or Interstate Railroad in Southwest Virginia have the lowest transportation rate available to them to the John Sevier Plant that we have.

4210

"Q. In other words, that would be the Western Virginia mines, is that right, on the Southern?

"A. On the Southern, yes.

"Q. They have the lowest rate into that John Sevier Plant?

"A. Yes, that is correct.

"Q. Does Clinchfield supply a significant part of the tonnage at John Sevier?

"A. They don't supply the quantity of coal today that they have in the past and I would like you to recognize that Clinchfield Company mine in Southwest Virginia that delivers coal to John Sevier is not located on the Southern Railroad, it is located on the N&W Railroad, and the freight rate off of that line to John Sevier is about 22½ cents a ton higher than the rate on the Southern.

"Q. What part of the John Sevier requirements is Clinchfield supplying under that contract?

"A. Well, presently that contract covers only about 15 per cent of the total term contract coal we are receiving at John Sevier.

"Q. Do you have a contract with the Pocahontas Division of Consolidation Coal Company?

"A. We do have a contract for production from a mine operated by Pocahontas Coal Company. The contract
4211 covers coal that delivers to our Kingston Steam Plant."

Mr. Rowntree: Top of 68.

REDIRECT EXAMINATION

(Mr. Rowntree read the questions and Mr. Combs the answers.)

"Q. Do you recall what part of 1955 this emergency condition arose at Kingston?

"A. I believe it was about the middle of '55 or the latter part, I am not positive.

"Q. I believe you said that it ran for about six months.

"A. Something in that order.

"Q. Do you think that that six-months period possibly ran over into 1956 any?

"A. There was some emergency coal bought in early '56, yes, for Kingston.

"Q. How early would you say, roughly, very first part of '56?

"A. Yes, I think it probably ran up to possibly about March.

"Q. Were all types of contracts, I should say, both types of contracts, increased during this time, that is, both term and spot?

"A. As I said earlier, during the emergency period we were buying, I believe, all coal that was being offered
4212 to us.

"Q. I believe one factor you mentioned was the increase in the stockpile, building a stockpile at Kingston. When a new plant is opened up, steam plant, do you have to build a stockpile like that?

"A. We do.

"Q. Your new steam plants that are being built all the

time, you are building stockpiles for them just as you did at Kingston in 1955, is that correct?

"A. That's right.

"Q. Now, I notice that your system as a whole, you were building up stockpiles each of the years 1953 and 1954 from the figures you gave just as you were in 1955, isn't that correct?

"A. That's correct.

"Q. Would you say that —

"A. Now, wait just a minute. In '55 we actually burned more than we received in '53, and in '54 we did build an inventory, but in '55 that was not true. We had to take a rather substantial amount of coal out of inventory in 1955. That was one of the factors that led to this emergency condition that we got into at Kingston.

"Q. This exhibit to your deposition shows that the last unit was put into commercial operation on December 2, 1955. Does that accord with your recollection?

4213 "A. The last unit that was installed at the Kingston Plant was placed in commercial operation in December, 1955."

"Q. From your long experience dealing with the coal industry, do you recall in the late 1940s there was also an overproduction of coal in the industry all over the nation?

"A. I don't recall it that way as there being an oversupply in the late '40s. As I recall the industry produced the greatest amount of coal in its history in about 1947. I believe it produced something in the order of 650,000,000 tons.

"Q. That was during the period, was it not, that the great shipments were being made to Europe during the reconstruction period immediately following the war, is that true?

"A. There was some coal, of course, being shipped to Europe, but I think that the recovery here in this country following the war was also a very, very important factor in this heavy demand for coal. The national production

in this country had declined from that level of about 650,000,000 tons in 1947 down to 392,000,000 tons in 1954.

"Q. What is an average size spot bid, roughly, spot award, I should say?

"A. I would say it is 1,000 tons or something in that order.

"Q. Would a 10,000-ton bid an unusually large bid?

"A. No.

4214 "Q. Do you receive many 10,000-ton bids on the spot market?

"A. We receive a pretty substantial number of bids for quantities as large as 10,000 tons. We receive a pretty substantial number of spot bids for quantities as small as 500 tons.

"Q. Do you receive many bids for as much as 10,000 tons for your eastern steam plants?

"A. We don't receive as many in proportion to other size bids for the eastern plants as we do for the western plants.

"Q. Would a bid from 18 to 60,000 tons be an unusually large bid on the spot market for the eastern section?

"A. A bid for 60,000 tons on the spot market would be an unusually large bid anywhere in the system.

"Q. What capacity would you say that the Kingston Plant is running at the present time, what percentage of capacity, I should say?

"A. I would say about 80, 85 per cent.

"Q. Is that pretty much maintained, that level, since it has been in full operation?

"A. Yes, it is operated at a pretty heavy load factor. For instance, it was completed in 1955.

"Q. Is this a high percentage of capacity as com-

4215 pared to any of the other steam plants?

"A. It is a high percentage of capacity compared to some of the other steam plants. It is not a high capacity as compared to our Shawnee Plant.

"Q. What percentage of capacity would you say that it ordinarily runs at?

"A. Shawnee would ordinarily run at a 95 or 100 per cent load factor. It is the lowest cost per kilowatt hour generation plant in our system.

"Q. In that connection, I believe you said that you would not have installed an additional unit at the Widows Creek Steam Plant had you not been assured of the Section 22 rail rate from the Western Kentucky field to the Southerstern Tennessee field, is that correct?

"A. That's my opinion.

"Q. I assume by that you mean that you would have been economically unfeasible to have done so without the Section 22 rate?

"A. That is my opinion."

"Q. Are you familiar with the difference in the grades of coal between the East Tennessee coal field and the Western Kentucky coal field?

"A. I think so.

"Q. How do they compare?

"A. Well, some of the East Tennessee coals are
4216 poorer in quality than West Kentucky, than some West Kentucky coals, and vice versa. You cannot say that all East Kentucky coal is better or poorer.

"Q. How would the averages compare, do you know that?

"A. I don't think I could answer that categorically.

"Q. Generally speaking, the West Kentucky coal can be obtained at cheaper prices than you can in the East Tennessee coal fields, can you not?

"A. Generally the mine prices on West Kentucky coal are lower than mine prices on Tennessee coal because of the geology between the two areas."

"Q. I take it that during the period over which TVA has constructed steam plants that the other public and also private utilities have also constructed plants, I assume there has therefore been a general rise in the amounts of

steam coal required in the country at large, is that correct

"A. That's true. Well, let me qualify that in that t railroads actually use steam coal. The utility systems i the country, including TVA, require a substantially large quantity of coal today than they did ten years ago. Th electric utilities in this country require about 40 per cent, believe, of the total production of the industry at this tim

"Q. So that the slack caused by the decline in the do-
mestic market and the railroad market would be a
4217 least partially taken up by the increase in the de-
mands for steam coal by the electric generating util-
ities; is that correct?

"A. Well, I think that the utility market offered oppor-tunities for some of the domestic producers to have a different outlet for their production than they had earlier

"Q. What do you consider the minimum average BTU that would classify as a metallurgical grade of coal?

"A. Well, the heat content is not the most important factor in establishing the best acceptable metallurgical coals. Other factors are considered. The coke button, the amount of sulfur in the coal, are really more prominent factors than the heat content.

"Q. Would you say that any metallurgical coal is pro-duced in Tennessee, whether it is used for metallurgical coal or not?

"A. The Southern coal when blended with certain other coals can be used to produce coke for the metallurgical industry."

Mr. Rowntree: Page 77, Line 14.

"Q. I believe you referred to two contracts made in 1957 in which there were provisions inserting requiring certain improvements in mining methods, is that correct? Did I understand you correctly?

"A. Two contracts were awarded in 1957 to two different
companies, one to each of two companies, which did
4218 include some provisions for improved or improve-

ment in mine productivity in order for the contracts to run their full term.

"Q. Was one of those to Consolidation Coal Company and its operation in Anderson County?

"A. One of them was to Tennessee Consolidated Coal Company for production from a mine in, I believe it is Grundy County.

"Q. And what was the other one?

"A. The other one was Tennessee Products and Chemical Corporation for production, I believe, from Bledsoe County."

Mr. Rayson: That concludes that deposition, your Honor. This one isn't as bad as it looks. This is the testimony of Howard Human, your Honor, which was given by Mr. Human in the case of Paul Gibbs against the United Mine Workers. It is being read in this case by agreement of counsel with the understanding that it pertains only to the claim of the Plaintiff Paul Gibbs in this case. I think we could further stipulate that Mr. Human died in early 1963.

* * * * * * * * * *

HOWARD CECIL HUMAN
DIRECT EXAMINATION

4219 (Mr. Rayson read the questions and Mr. Combs the answers.)

"Q. What is your name?

"A. Howard Cecil Human.

"Q. What is your occupation?

"A. General superintendent for Tennessee Products and Chemical Corporation.

"Q. How long have you held that position?

"A. Since January of '61, January 30th.

"Q. Mr. Human, do you know Mr. Paul Gibbs?

"A. Yes.

"Q. When did you meet Mr. Gibbs?

"A. Shortly after my arrival on this job.

"Q. Did he have a mine leased or under contract with your company?

"A. Yes.

"Q. There is being handed to you a document. Would you tell us what that is?

"A. That is a lease with our company, a lease or sub-lease with our company for the operation of four mines on our property, 41, 57, 74 and 75.

"Q. Who is the lease with?

"A. Tennessee Products and Chemical Corporation and Paul Gibbs.

"Q. Now, is that a lease of the coal land or is that
4220 just an agreement where Mr. Gibbs is to produce coal from your lands?

"A. This is an agreement or sub-contract for the mining of coal on our property.

"Q. All right. Now, lists how many mines?

"A. Four.

"Q. Four. Will you describe how those mines are designated, what is meant by those numbers, 74 and 75?

"A. That is the designation that is given a certain area on our maps, and the mine that goes into that particular area will have that number. There will also be a number in front of that, a 1, 2 or 3 to designate what particular area of the property that the mine is on.

"Q. How many mines of this type did Tennessee Products have in 1960, approximately?

"A. That was before I came to the company. I would guess in excess of 50.

"Q. How many did they have in 1961?

"A. Probably about 40 or 50 at that time.

"Q. Now, calling your attention to this agreement, what price was Tennessee Products to pay for the coal that was mined by Paul Gibbs?

"A. Are you referring to the price in the lease?

"Q. Yes.

"Q. 3.45.

4221 "Q. I notice that there is in pencil two other figures after that price of $3.45—seven cents and I believe the other is 60 cents. Will you explain what that is?

"A. The seven cents was a raise that was given — I think prior to my coming with the company, is the increased price, seven cents. The 60 cents is actually the addition to that price by my company, it's a bookkeeping addition of a royalty sum and then they deduct the royalty.

"Q. Then what was the amount of money that Mr. Gibbs received from the sale of that coal produced in his mines from your property?

"A. Prior to the seven cents increased it would have been $4.05. After that time it would have been $4.14.

"Q. And from that was deducted 60 cents, which was the royalty due?

"A. Yes.

"Q. So that he would actually receive then $3.45, or when the seven cents went on then would be $3.52 a ton?

"A. Yes.

"Q. Does that lease carry an expiration date?

"A. It does not.

"Q. What are the terms? Would you read the clause that has to do with the cancellation of the lease?

"A. 'Unless canceled or terminated as herein provided, the duration of this contract shall be for one year

4222 following the date of execution hereof, and from year to year thereafter. Either party shall have the right to cancel this contract at any time upon serving 30 days written notice on the other party, specifying the date of cancellation and termination and upon the expiration of said period of time said contract shall stand fully canceled, terminated and thereafter of no further force and effect.'

"Q. Now, Mr. Human, did Tennessee Products cancel the leases on these mines in 1961?

"A. Yes.

"Q. Can you tell me when the first cancellation occurred?

"A. Insofar as I know it was in January of 1961 on th 74 mine.

"Q. All right. Who had your position prior to your com ing there?

"A. Mr. Travis had that position as late as October o '60 and during the interim when Mr. Travis left a Mr Merryman in Nashville assumed control of the property and a Mr. Daffron in the Whitwell area was in control o the property.

"Q. Do you have a man by the name of Coffelt, or some thing like that?

"A. Billy Coffelt.

"Q. What job did he have?

4223 "A. He was an — worked in the office at the Whit well operation.

"Q. I hand you a letter and ask you — a copy of a letter — and ask you if you can identify that?

"A. Yes, sir. That's a letter that I wrote.

"Q. Who did you write the letter to?

"A. Mr. Gibbs.

"Q. What is the date?

"A. September the 7th, 1961.

"Q. Would you read that letter, Mr. Human?

"A. 'Whitwell, Tennessee. September 7, 1961. Mr. Paul Gibbs, Tracy City, Tennessee.

'Dear Mr. Gibbs:

'It has just come to my attention that Mine 2-074 that was formerly leased by you, is presently being worked in your name. In checking through our files, I note that a lease cancellation letter for this mine was sent to you on January 5th of this year. This is to advise you that since no lease is in existence covering this mine, all work in and around 2-074 should be stopped immediately. Please contact me at our Reel's Cove office if there are any questions concerning this matter.

'Yours very truly, Tennessee Products and Chemical

Corporation. Howard C. Human, Assistant Vice President, Mining.'

4224 "Q. In addition to this agreement that you had to produce coal from your mines, did you have another agreement to purchase coal from Mr. Gibbs?

"A. There was an agreement between Mr. Gibbs and our company for the purchase of coal from other sources to fill a contract that he was putting in — one of our contracts.

"Q. There is being handed you a copy of another letter. Will you identify that letter and tell us what it is?

"A. That is a letter written by me, another letter on September 7, to Mr. Gibbs, relative to the quality of coal that was going in one of our contracts.

"Q. Will you read that letter?

"A. 'Whitwell, Tennessee. September 7, 1961. Mr. Paul Gibbs, Tracy City, Tennessee.

'Dear Mr. Gibbs:

'As you know we have been having considerable problems with the quality of our outside coal that is being put in on the Marquette Cement Plant contract. After going over our latest analysis covering this coal, it appears that the hoped for improvements have not been forthcoming, and that quality problems will continue to be a problem with this coal. In order to improve this situation, we are going to eliminate the delivery of purchased coal from mines or companies that are operating outside of the Tepco

4225 leaseholds.

'Effective Monday, September 18th, all coal deliveries on the Marquette contracts must come from mines that are operating on Tepco leaseholds. This should give you ample time to make the necessary arrangements to purchase coal from the small mines on our property in an amount equal to that which you are presently purchasing from outside sources.

'Please contact me at our Reel's Cove office if you have any questions on this matter.

'Yours truly, Howard C. Human.'

"Q. I notice that this letter says 'Tepco lease.' What is meant by 'Tepco'?

"A. That's Tennessee Products and Chemical Corporation.

"Q. Had you had any complaints about the coal that had been delivered, had been purchased by Mr. Gibbs and delivered to the purchaser in regard to the quality of this coal?

"A. I had had complaints through our sales department as to the quality of the coal that was being put in at Marquette.

"Q. What did they say was wrong with it?

"A. High ash.

"Q. What was the first date that you learned that they had this complaint?

"A. In May, I believe, was the first time that I
4226 ran into the problem.

"Q. What year?

"A. 1961.

"Q. Now, will you tell us what you meant by 'the ash content', and how that is measured, and how you test it, and what is an acceptable amount of ash content and what was unacceptable?

"A. On this particular contract the Marquette people, our contract specified 12 per cent ash. In verbal discussions with our people they were pushing for 10 per cent. In other words, they wanted us to give them a better quality coal than the contract actually called for.

"Q. And what kind — what was the ash content of coal delivered by Mr. Gibbs?

"A. The outside coal that was purchased, both from Mr. Gibbs and other operators that bought some outside coal, ran anywhere from 13 to 16 per cent. I think we had one instance that it went around 29 per cent.

"Q. Did you tell Mr. Gibbs about this—complaints they had had?

"A. Yes. We discussed it. I discussed it with both he

and the other individuals that were putting in on this contract.

"Q. Did you have another operator that was doing the same thing and you also canceled his contract because
4227 of this?

"A. We had another operator, Jim Campbell, who was purchasing outside coal, and we also stopped the purchase of outside coal from Mr. Campbell.

"Q. It has been handed to you another letter, a copy of another letter. Can you identify that letter?

"A. That is another letter from me to Mr. Gibbs, September 26, 1961.

"Q. Will you read that?

"A. 'Whitwell, Tennessee. September 26, 1961. Mr. Paul Gibbs, Tracy City, Tennessee.

'Dear Mr. Gibbs:

'During the past several weeks, there has been a considerable discussion concerning the ash analysis on the outside coal being delivered on the Tepco coal contract at the Cowan Cement Company. On September 7, 1961, you were notified verbally and by letter from this office that effective September 18, all deliveries made on this contract must be of coal mined from the Tepco leaseholds. According to our recorded scale weight tickets, this was not carried out during the week ending September 22, 1961. As a result this is official notification that no further deliveries of coal from any source will be accepted on the Cowan Cement contract. This will confirm our phone conversation of last evening. Should you have any further questions on this matter, please contact me at the Whitwell office.

4228 'Yours very truly, Howard C. Human.'

"Q. Now, there's one other mine that is listed here. By the way, what were the two mines, or what mines was Mr. Gibbs operating in 1961?

"A. I think there was some coal from the 59 mine, the 75 mine, and also some coal was produced in the 74.

"Q. All right. Now, when was the — or was the lease or the agreement canceled as to the No. 75 mine?

"A. The lease on 75 was canceled in March of 1962.

"Q. All right. Do you have a copy of that letter?

"A. I do not have one with me."

"Q. I want you to listen carefully and see if this is a letter that you wrote to Mr. Gibbs.

" 'March 8, 1962. Mr. Paul Gibbs, Tracy City, Tennessee.

" 'Dear Mr. Gibbs:

" 'In view of the fact that Mine 2-075 has been idle in excess of 30 days, this letter is to inform you that the coal contract of October 1, 1959, pertaining to said mine is to be considered canceled and void, 30 days from the above date. We understand that you have some of your equipment in the mine and expect you will have it removed in the aforementioned period. If you have any questions concerning this matter please contact me at the Reel's Cove office.

" 'Very truly yours, Tennessee Products and
4229 Chemical Corporation. H. C. Human, General Superintendent.'

"Is that the letter? I note that the letter said that the mine had not operated, or been idle in excess of 30 days. Do you know the last day or the last month that Mr. Gibbs produced coal from that mine?

"A. I believe it was in December of '61."

* * * * * * * * * *

"Q. Now, did you have any discussions with Mr. Gibbs about leasing any more property from your company?

"A. At the time we were discussing the purchase of all the coal or the sending of all the coal to the cement company from our property rather than purchasing outside coal, we discussed it and Mr. Gibbs was interested in obtaining another lease. However, I didn't have anything in the Whitwell area. The only thing we had was in the Daus area, which the coal seam is more uneven, the risk is a little greater, and — in that area — and he wasn't too

interested in taking a mine up there in that particular area. I had nothing to offer him in Whitwell.

"Q. Did you offer him a mine in the Daus area?

"A. As I recall, I told him to look the area over and to see if there was anything in the area that he would like, and then we would discuss it, the situation.

"Q. When was the last conversation that you had with him in this regard?

4230 "A. I'd say in September of 1961, probably.

"Q. Did he ever, subsequent to that time, ask you to lease him any property or let him operate any mine on the Tennessee Products property?

"A. I don't recall that he did.

"Q. Now, who had the — are you the man that made the decision to cancel these leases and cancel these contracts?

"A. Yes.

"Q. With Mr. Gibbs?

"A. Yes.

"Q. You had that authority?

"A. Yes.

"Q. Did any representative of the United Mine Workers of America, either District 19 or the International Union or any officer, ask you to cancel those leases or intimate to you in any manner that you should cancel them?

"A. No, sir.

"Q. Did you make this decision entirely on your own?

"A. Yes, sir. I discussed it with my superiors, however, I made the decisions.

"Q. All right. Do you know Howard Madewell?

"A. Yes, sir.

"Q. Who is Howard Madewell?

"A. He is the local representative of District 19, UMW of A.

4231 "Q. Did you have any discussions with Mr. Madewell about canceling these contracts or did you have any discussions with Mr. Madewell in the spring of 1961 about Mr. Gibbs?

"A. I don't recall that we had any specific discussion relative to Mr. Gibbs as such. We may have discussed him in general with a lot of other operators. I do not recall that there was ever a specific meeting on that as such, no.

"Q. Well, when did this discussion or discussions take place?

"A. I would say in early or about the middle, just before June, probably, of 1961, April, May, June, along in that area.

"Q. Did you know the operators in that area very well?

"A. No. Actually I was getting acquainted with most of the operators and a lot of the people in the area at that time.

"Q. How did you discover that Mr. Gibbs' lease had been canceled back in January?

"A. By going through the files. Periodically I would go through the files to familiarize myself with some of the previous goings on in that area, and just by accident I ran across the letters relating to the cancellation.

4232 "Q. So that actually the Mine 74 was canceled prior to your coming with Tennessee Products?

"A. According to the information in the files, yes.

"Q. Did you ever have any discussion with any other representative or other officer of the United Mine Workers of America regarding Mr. Gibbs?

"A. No, sir."

Mr. Rayson: Cross examination. There is another question on the direct examination, your Honor, I have overlooked it.

"Q. Is the Tennessee Consolidated Coal Company a competitor of yours?

"A. Yes, they are."

* * * * * * * * * *

"Q. Mr. Human, Mr. Van Derveer said that you had had happy relationship with Mr. Gibbs in 1961. Was the relationship between the Tennessee Products and Mr. Gibbs a happy one in 1961?

"A. We had some problems, relative to our ash. I don't recall any particular ones early that year that I had had with Mr. Gibbs.

"Q. Do you know who is Mr. W. A. Moody?

"A. He is the secretary, or was the secretary and
4233 legal counsel in our Nashville office.

"Q. Do you make reports to Mr. Moody?

"A. Yes, sir.

"Q. Did you report any difficulty to Mr. Moody, other than the ash content, any difficulty you may have had with Mr. Gibbs?

"A. The primary thing that I discussed with him, as I recall, was the ash trouble and the problems that we were having to hold the contract.

"Q. I will hand you a letter and ask you if you can identify that letter, Mr. Human?

"A. Yes, that is a letter from me to Mr. Moody on September 26, 1961.

"Q. Would you read that letter?

"A. 'To: Mr. W. A. Moody.

'From: H. C. Human.

'Subject: Paul Gibbs and Marquette Cement and Manufacturing Company.

'This will confirm our phone conversation as to the canceling of Paul Gibbs' Cowan Coal contract, effective today, September 26, 1961. I have also shut down the 2-074 mine, operated by Gibbs without a lease on this property. Mr. Earl Nunley, who operated the 2-074 for Paul, was in today to discuss the matter of this mine. Last week he mined 104
to 106 tons of coal and Paul turned in 209.45 tons
4234 delivered and the difference was Tracy City strip
coal, of poor ash quality, as I told you. Mr. Nunley also stated that Paul had tried to get him to go over to the picket to Jim Campbell to prevent him from putting coal in too, but he said he refused. He is mad at Paul for getting him to go into 2-074 without a lease. He has information as to what he mines, and says we can have it if we want it.

2-075 was reported to have mined 210.9 tons per Paul, b
Nunley says this is not true. Looks like Paul screws ever
thing and everybody he comes in contact with. H.
Human.' "

* * * * * * * * *

4239 ROLAND A. KAMPMEIER,

a witness called at the instance of the defendan
being first duly sworn, was examined and testified
follows:

DIRECT EXAMINATION

By Mr. Rayson:

Q. Would you state your name and your address an
occupation?

A. I am Roland A. Kampmeier; I live in Chattanooga
1742 Crestwood Drive; I am an independent consultin
engineer.

Q. Mr. Kampmeier, are you a member of a consultin
firm or do you work independently?

A. I work independently.

Q. What is the nature of your work and clientele, could
you give us some recent examples?

A. Well, this year, for example, I have probably spent more
time in the technical assistance work of the United Na-
4240 tions than any other one thing. I have worked for two
or three systems, power systems that are building
good-sized coal-burning steam plants, the South Carolina
Public Service Authority and the Basin Electric Power
Cooperative and Instituto Costarricense de Electricidad,
well, let's just say for Central American power system, we
don't need to put the name, it's Spanish, which operates
hydro and fuel-burning power plants, for a management
consulting firm developing resources corporation and on
a study of the fuel and energy resources of the mountain
states, for the Delaware River Basin Commission, which is
concerned with the planning, the most effective use of the
Delaware River and its tributaries.

These are most of the associations I have had this year.

Q. What has been the nature of your work with the United Nations?

A. Well, this year I have made two trips to Africa for them in connection with a study of the desirability of collecting comprehensive rain for streamflow data for the headwaters of the River Nile in an area of about, oh, three times the size of the State of Tennessee.

Q. How long have you been doing consulting work?

A. Since 1961, and continuously, part-time in '61 and full-time since 1962.

Q. What was your occupation before that?

4241 A. I was with the Tennessee Valley Authority.

Q. How long did that last?

A. Well, I started working for TVA in 1933, just a few weeks after TVA was created, and worked with the organization until 1939 and then again from 1941 until 1961 and '62.

Q. Mr. Kampmeier, have you at my request and on a consultation basis worked with me in connection with this litigation in reviewing aspects of the TVA power program and the development of the TVA plant system?

A. Yes.

Q. Going back now to your association with the TVA, what was the nature of your assignment with TVA over the years.

A. Well, the most recent period, the last ten years or more, I was the Assistant Manager of Power. As that title implies, I was the assistant to and acting for the Manager of Power and my work dealt with a variety of subjects in the field of management and operation of the power system of TVA.

Q. When you had an occasion to act as manager of the TVA power system, how many people were under your supervision?

A. About 5,000.

Q. How did you happen to leave TVA?

A. Well, the last ten years or so that I was referring to from, say, 1951 to 1961, were a period of unusually
4242 rapid growth in the power system, in the facilities that we needed to build because of a very rapid increase in loads and the quantity of coal that we needed to obtain and so on and this was a period, therefore, of many new problems, many challenging studies.

By 1961 it seemed quite clear to me that it would be a long time, if ever, before there would be another period of as rapid development and that my attention would be likely to be more heavily concentrated on administrative work than on these sort of special and novel problems and I prefer the special problems to the administrative work.

I had been developing considerable interest in what I might be able to do in the way of applying my experience in other developing areas of the world, including overseas, and so I felt that that was a good time to make a change and so I left TVA and went into consulting work.

Q. I take it you left TVA on friendly terms?

A. Yes. I was asked by TVA to take a leave of absence instead of leaving and to consider whether at the end of that period of leave I might return to TVA. As a matter of fact, I continued to do some work for TVA during that period when I was primarily on leave of absence, but by the summer of 1962 I concluded that I would not return to TVA and would stay in private work.

Q. Mr. Kampmeier, did your duties include devel-
4243 oping recommendations for the size and location of steam plants?

A. Yes, very much so. During the period that I was Assistant Manager of Power, I was also during most of that period Director of Power Supply and in that capacity it was my responsibility to develop, do the necessary planning, develop the recommendations as to size and location of TVA steam plants and fuel supply for them.

Q. What about the Widows Creek Steam Plant, did you

have anything to do with the determination of where that steam plant would be located and what its size would be?

A. Yes; yes. And with regard to the installation of the successive units there I was particularly involved in the later additions to the plant.

Q. What about the other TVA steam plants, Shawnee, Colbert, Johnsonville, Bull Run, Gallatin, and Paradise, did you have anything to do with their development on location?

A. I played a responsible part in the location and size of each of those.

Q. Was it part of your responsibility to help the TVA Board shape TVA policies and procedures for obtaining a fuel supply for these steam plants?

A. Yes. It was a very substantial element in the planning of these plants to satisfy ourselves that we would have an ample and economical fuel supply and the planning of that fuel supply was my responsibility and was part
4244 of my responsibility to develop recommendations in connection with that subject for the TVA Board.

I would like to note that in fulfilling those responsibilities I was constantly discussing the problems with a good many other people in TVA, who are also concerned, the people, the purchasing people that handled the bidding and the coal contracts, the Power Operations people, who received the coal and burned it in the plants, and so on.

Q. Was there a rapid growth in the TVA's power supply and coal supply during the last ten years of your connection with TVA?

A. Yes, very much so. As I mentioned, that was what made the job so interesting during that period from 1951 to 1961, the production and use of TVA power multiplied twenty times.

The output of the system in fiscal 1951 was about two and a half billion kilowatt-hours, — excuse me, I am speaking now of the steam plants that we were referring to, the steam plants — the steam plants expanded their production from about two and a half billion kilowatt-hours in 1951

to nearly forty-eight billion kilowatt-hours by fiscal 1961, which, as I said, was a multiplication of about twenty times in the production of steam power.

The use of fuel, of course, expanded more or less proportionately, multiplied about sixteen times in the same period from about 1.2 million tons in 1951 to more than 19 million tons in 1961.

4245

Q. Did this expansion create a new market for coal in this area?

A. Yes. I think that it should be described as a new market for coal because it was such a different and expanded situation. This was true to some degree throughout the country in that some of the former markets for coal were being lost, were being gradually replaced by a market for field for power plants, but this was true on a extraordinarily greater degree here than elsewhere.

As a matter of fact, during the early 1950's of total increase throughout the country in purchases of coal for use of power plants, one-third of that increase was taking place right here in the Tennessee Valley.

Q. How do you account for such an expansion in this area of steam power generation and the use of coal?

A. Well, it was basically and fundamentally due to the effect of the TVA policy in its power program of making power, electrical power, available abundantly for widespread use at the lowest practicable cost.

This had many results in the way of increased power use, all of which had their accumulative effect. The use of power in homes and in industries and on the farm were all expanding very rapidly, all through the fifties, and in addition to that there was a very large expansion of power use due to the expansion of the atomic energy facilities.

4246

The 1950's were the years in which the Atomic Energy Commission expanded its Oak Ridge operations much larger than the initial installation and built its large plant at Paducah, and these plants used very large quantities

of TVA power and, of course, the impact showed up in the growth that I referred to in the steam plants and in the use of coal because by 1950 TVA had largely completed the development of the economical potential hydro power of the area and as a result of it it was necessary to meet all of this expansion of power use with steam plants.

Q. What was the ratio of steam to hydro power generation changed during this period?

A. Well, it changed very sharply. In the beginning of the 10-year period I was speaking about, in 1951, our generation of electricity by steam was about one-sixth of the amount that we were generating with hydro. By 1961 we were generating three times as much electricity with steam as with hydro.

Q. Mr. Kampmeier, I wonder if you could explain in some more detail the impact of the Atomic Energy Commission's power requirements on the TVA system?

A. Yes. This impact was particularly great during the period from about 1951 to 1956. During that period
4247 the sales by TVA of electricity to federal agencies and the great bulk of those sales were to the Atomic Energy Commission, so essentially I am talking about AEC, those sales of electricity to federal agencies multiplied fourteen times from '51 to '56, starting off from a fairly modest part of the total sales of electricity by TVA and going to the point where by 1956 the sales to the Atomic Energy Commission were greater than the total of all other sales of electricity throughout the area served by TVA power.

The development, as I have mentioned, had to be almost entirely with steam power and as a result by 1956 we were delivering to the Atomic Energy Commission more than twice as much steam-generated electricity as the entire system of TVA hydro plants was able to produce in the way of hydroelectric power.

So I think this illustrates pretty simply and directly the impact that the AEC load had on the steam power program of TVA. I think it probably is also important to bring out

that the load, because it was growing so rapidly, was creating some problems for us in keeping up with the growth.

The Atomic Energy Commission had the ability to demand of manufacturers of equipment that the AEC be given priority in the manufacture and delivery of equipment and, as a result, the AEC was able to build its facilities for using power faster than we could build our
4248 facilities for generating power, and we were continually being loaded completely during those years, 1953, '4, '5, and '6.

We were, in years like 1954, '55, and '56, I recall that we were getting power from other power systems as far away as the Gulf and Great Lakes and this in addition, of course, to keeping our own facilities loaded as fully as possible with the result that during the years 1954 to '56 the TVA steam plants were operated at about a 97 per cent capacity factor, about 97 per cent of continuous full load, which is an unheard of sort of thing.

Q. What is the normal capacity?

A. About 50, about 50 per cent would be normal, and this was really most extraordinary. I don't know of any case anywhere on any power system anywhere in the world for any period that had that sort of a situation.

Q. When did you begin personally to become involved in TVA's coal supply problems?

A. In about 1951, this was at the beginning of the period of rapid expansion of the steam plants, it was clear that we were going to be expanding our steam capacity very sharply and that this would mean that coal would become very much more important than it had been.

Coal, roughly speaking, the cost of coal represents half of the cost of electricity from a steam plant, and so
4249 in trying to plan an economical and rapid expansion of the power system, it was necessary to give at least as much attention to coal as anything else in connection with the steam plants.

There were specific problems coming up, too, at that

time. For example, we were offered a supply of natural gas for the Johnsonville Steam Plant, which is the first of our large steam plants, and so we had the question of whether a purchase of gas in large quantities instead of buying coal to fuel that plant would be an economical and wise thing to do.

We had questions coming up as to the nature of the coal contracts that TVA should make. There had been the first few large contracts made for coal for Johnsonville and in a small way for other plants, and it was beginning to appear that we needed to give a lot more attention to such questions as to how you made a coal contract as simple and clear as possible, what would be the desirable length of term for coal contracts, what kind of escalation provisions would be most workable and desirable, how one should handle the evaluation of coal of different coals, and so forth.

Q. Do all of the TVA plants use coal at this time?

A. Yes, they all burn coal exclusively except for various insignificant amounts of oil for starting a unit, but other than that they burn coal exclusively.

4250 'Q. Well, had gas been a real possibility?

A. Oh, yes, yes. The Johnsonville case illustrated that and at that time I thought that, many of us did, that gas was probably more likely to be attractive for a plant like Johnsonville and maybe some of our others than coal.

I rather soon became convinced that coal cost could go down in relation to gas and that the coal would be the better fuel, but if the trends had been in a somewhat different direction, if it had appeared that coal costs would be more likely to go up than down, then I think it is quite likely that we might have by now been buying a lot of gas.

I could cite as an example of the changing trends that when the Atomic Energy Commission first began its operation at Oak Ridge and built a steam plant of its own there to supply initially part of its initial power requirements, after burning some coal in that plant they entered into a long-term gas contract for the plant because they were

convinced that gas would be a more dependable fuel, a more stable fuel in terms of cost, as well as supply, and that they would eliminate problems of uncertainty in rising costs by making a gas contract.

Later I think they changed their mind.

Q. How did you come to the conclusion that the cost of coal would go down?

A. Well, because this was a new market for coal
4251 that we were talking about. I think the way to bring out the points more effectively would be to compare the kind of a market that we were creating were on the principal markets that coal had been losing, namely the so-called domestic market or house heating, space heating market, in supplying coal for the heating, space heating market, the industry had to crush, screen and wash the coal, classify it by size. They had to have a large sales organization dealing with a large number of retailers. They had to sell their coal by and large in comparatively small lots. They had to deal with a very seasonal market.

In contrast to all of those elements, which tended to make coal costly, we were opening up a market which had all of the reverse characteristics.

This is a market in which the coal could be sold in bulk, in which it could be sold as it came out of the mine, run-of-mine coal with a minimum of crushing and screening and washing. It was a coal, it was a market in which coal could be sold under contracts for fairly long terms if the suppliers so desired.

The market we were able to so plan our purchases so that the market was a year-around market, continuous market.

All of these things seemed to me to make it almost self-evident that coal costs could go down, should go
4252 down, and with reasonable competition would go down.

Q. Did the matter of transportation of coal in volume have anything to do with your thinking?

A. Oh, yes, because both the mining and the transportation of coal were subject to economies of scale. We knew from our own experience in handling large quantities of bulk materials on construction projects that you can handle bulk materials in bulk a whole lot cheaper per unit than you can handle it in small quantities. It is a lot cheaper to handle earth or rock or coal in a hundred ton truck than in a wheelbarrow, and this essentially was the element of comparison that we were thinking about because the mining and the transportation of coal could be geared to volume production if you had a volume market, such as we were creating.

Q. Well, now, how did this judgment affect your fuel planning, Mr. Kampmeier?

A. Well, it convinced us that, of course, what we needed to do was to make it as clear as possible to prospective suppliers that what we had to offer was an attractive market for coal in bulk and we wanted to plan our facilities in such a way as to make this as much a fact as possible.

We needed to design and plan our system in such a way that we would be creating an attractive bulk market.

Q. What were the attractions of the TVA market
4253 to coal producers?

A. Well, let me list them with perhaps some risk of a little repetition.

First, volume, the assurance of a bulk market and the opportunities there for encouraging bulk production.

Second, the year-around nature of the market, the fact that we were able to buy coal at a rather steady rate throughout the year and take any swings in the actual consumption of coal in our plants as related to the electrical house use, for instance, by varying our stockpiles rather than varying to any considerable extent the quantities of coal we purchased from month to month.

Third, the fact that we offered a very wide range of quality tolerance. What I am trying to say is that we were willing to use even the poorest coal produced in the various

areas that we could draw on, coal which it is hard for p
ducers to sell in other markets. We were able to design
plants so as to take mine-run coal from almost any ki
of a mine, even to use what had been in the nature of
product coal, very small sizes with very, very high a
content, very high moisture content coal that would be di
cult for other people to burn.

Fourth, we offered, we tried to make our market attra
tive by offering more desirable terms, terms for contra
than were the order customary, even to a considera
4254 degree among other power systems. We were wi
ing to make a contract for most any length of ter
that a supplier might be interested in and to assure him th
that coal would be taken week after week with only modera
provisions for variations in the quantities and with th
assurance therefor that as long as the supplier was d
livering on schedule and delivering coal of the quality tha
he guaranteed that it would be taken within rather narro
limits.

We also, in addition, I am speaking there, of course, pri
cipally of term contracts, we also offered a market for spo
coal or very short term sales of coal, which developed int
a weekly market, which was a very useful thing for peopl
who had temporary surpluses of coal or for small pro
ducers who wanted to experiment with an operation befor
they committed themselves to long term and various othe
ways it provided a useful attractive market.

So these factors together added up to opportunities t
produce and sell coal in quantities and at a low cost.

Q. How did the size, the nature, location of the TV
system affect your plan?

A. Well, in the first place the fact that the system was
large and physically widespread meant that we could plan
our system so as to draw coal from several coalfields and
to be able to shift over the years the relative volume
4255 of coal obtained from these several fields. We could
get coal from southern Illinois, western Kentucky,

eastern Kentucky, Virginia, eastern Tennessee, southern Tennessee, Alabama, all these sources of supply being within reach of this large and widespread system was an element that was important in our thinking and our planning.

I think it was also important perhaps in another way, in that it helped to reassure us any time we might otherwise begin to have any doubts about it that we could rely on the competitive free enterprise system for our coal supply.

We naturally asked ourselves the question from time to time whether, like the steel industry, for instance, we ought to set up a captive mine operation, so to speak, do our own coal mining.

Unlike the steel industry, or unlike what I think might be expected in the case of a large government-owned power system, like TVA, if you were considering one in many other countries of the world, we did not conclude that we ought to set up our own mines. We were willing to rely on the system of free marketing economy.

We only did not set up our own mines but we didn't feel it was necessary to find some large producer and contract with him to do our coal supplying for us on any monopoly sort of basis.

4256 We didn't feel it was necessary to ask for any government controls of production or pricing. We didn't feel that it was necessary to do any of these things in the direction of a controlled economy, but rather we relied heavily on competitive coal supply.

I emphasize this because it is something which I think was behind really much of the criticism that TVA got from time to time on its coal buying, the very fact that we did feel that we ought to rely on a system of competitive free enterprise.

Now, this, I think, is something that can be spelled out in more details. Perhaps I am going into too great length here, but, for example, in locating our plants, in planning our plants we would try to locate each steam plant, insofar as

possible, where it could draw on two or more coalfields, where it could be served by two or more modes of transportation.

All of this was, of course, consistent with our own philosophy on the sale of TVA power with a view that it is desirable to make energy available at the lowest possible cost and as abundantly as possible, because we felt that it was in this way that we could create the greatest use of energy as a tool for the development of this region, which was TVA's basic job.

We felt that the supply of electricity in abundance
4257 at the lowest possible cost would mean that we would have a continuing rapid growth in the use of electricity and this in turn would mean that there would be a rapid and large growth in our demand for coal and that if we could encourage the coal to be supplied at a minimum cost, as we were trying to produce, this is the way in which the maximum growth would take place and this is the way in which not only the region but the coal industry would get the most benefit out of this situation.

Q. Did you attempt to get these views across to the coal producers in the TVA area?

A. Yes, certainly, both in conversations and in written statements and every opportunity we thought we could reasonably take. Maybe we didn't do it as much as we should or as well as we should, but we tried.

Q. Did you issue statements from time to time?

A. Yes, we did. We prepared statements for the press and for the coal industry with regard to how the TVA was trying to supply itself with coal and what our policies and procedures were.

Q. I hand you a pamphlet entitled "TVA's Coal-Buying Program," dated April 11, 1956. I am informed that that is already in evidence. I don't recall the exhibit number.

Did you prepare that or have anything to do with
4258 the preparation of that statement?

A. This was prepared under my supervision, I am sure I wrote parts of it myself.

Q. All right. Apart from that, Mr. Kampmeier, did you do anything else with respect to getting across to the coal producers your views on modern coal markets?

A. Yes. We always took the opportunities presented by meeting quite frequently, I shouldn't say "always," but quite frequently to try to stress the fact that we were creating and anxious to be creating a growing market for coal and that we hoped that this would result in opportunities for expanded and lower cost production. We not only expressed this viewpoint in conversations with individual producers and suppliers, but I remember we arranged meetings, for example, at the Kingston Steam Plant, Shawnee Steam Plant, where we would invite groups of coal producers, some of the railroad people, to come and we would review with them the future that we saw for the expansion of that plant and the system of market. Occasionally I would accept an invitation to talk to industry groups here and there.

Q. I hand you a copy of another paper and ask you if you can identify that?

A. Yes. This is a talk which I gave to the coal convention of the American Mining Congress in 1960 as one of a group of speakers who were asked to discuss
4259 various aspects of the subject "National Fuels Policy," and these were the remarks that I made at that time. That was in Pittsburgh, apparently May, 1960.

Q. Did you express the views in that talk that you are expressing here this morning, Mr. Kampmeier?

A. Yes, I think very much the same views, that the power industry was the large and growing future market for the coal industry, that the power industry would grow rapidly or slowly depending on how efficiently and economically a job it would do and that the coal industry would help it to do and that if the coal industry and the power industry got its cost low enough, the use would be very rapid and

the volume that would be created would work to benefit not only the consumers but the producers.

I think I might read one sentence here, which I think is particularly pertinent in that regard that I stated to this group at that time, "If the use of coal produced electricity had grown at no faster rate in the Tennessee Valley than elsewhere, TVA might now be buying one or two million tons of coal a year instead of TVA's buying twenty million tons."

Now, what I was trying to say to these people was that the TVA area was an example of what could be done in the way of a very large expansion of their business and that I hoped that they would recognize the value of
4260 such opportunities and seize those opportunities.

Q. Would you file that copy of that talk as an exhibit to your testimony, Mr. Kampmeier?

Mr. Rowntree: May we look at it?

The Court: Exhibit 376.

(The statement referred to above was marked D376 and received in evidence.)

By Mr. Rayson:

Q. Mr. Kampmeier, how did the competition in the TVA market work out as between the large and small producers?

* * * * * * * * * *

A. The coal industry, like so many industries today and age is one in which there are some advantages in being fairly good-sized, that is, a large or a middle-sized coal company finds it is somewhat easier to make the necessary adjustments to develop modern equipment and to do a low-cost and effective marketing job.

However, the coal industry is one in which there is room for considerable range of size. The list of successful coal companies throughout the United States, just as
4261 the list of successful coal companies in this area, keeps changing, but it is by no means limited to one particular size or another. There is quite a range of companies from small to large.

The proportion of the market which is supplied by the middle-sized to large companies I think keeps growing, but there is still quite a wide range of sizes.

Q. Mr. Kampmeier, it is the theory of the plaintiffs in this case that it was the intent of a few large companies to take over the TVA market and these companies are stated to be Consolidation Coal Company, its subsidiary, Pocahontas Fuel Company, Island Creek Coal Company, West Kentucky Coal Company and its subsidiary Nashville Coal Company, Peabody Coal Company, Pittston Coal Company and its subsidiary Clinchfield and Pittsburgh-Midway Coal Company.

Now, with regard to the purpose of these companies, would you say that these companies, this group of companies, did take over the TVA market?

Mr. Rowntree: Object to the form of the question and the statement, particularly the statement with reference to the theory of the plaintiffs.

The Court: I believe I will sustain the objection as to the form of the question and allow the witness to answer, the witness can answer with regard to what any of these companies you have named may have done with re-
4262 gard to the TVA market.

Mr. Rayson: Let me ask the witness in this way:

By Mr. Rayson:

Q. Mr. Kampmeier, disregarding what I said previously as to the theory of the plaintiffs, did or have the companies that I named taken over the TVA market?

A. No, not anywhere nearly so. I will say that during the years when I was well acquainted with TVA's coal supply from, say, '52 to '62, that that group of companies that you named accounted for not more than 25 per cent, if that, of TVA's total coal supply.

Q. Now, I would like to ask you about each of these companies and their importance to the TVA's coal supply program. First of all, Consolidation Coal Company, what about it?

A. Consolidation Coal Company throughout most of the period that I am referring to, probably all of it, was the largest coal company in the United States, but it was never very important in the TVA market.

At one time we thought perhaps it might be quite important. What particularly caught our interest, if I recall, was that this company was doing considerable work, considerable research work in the possibility of what they referred to as a low temperature carbonization of coal in which the coal would be so treated as to remove from
4263 it valuable chemicals and leaving a char which would then be a by-product fuel and a low-cost fuel that might be burned in our plants, and I remember that we met with Mr. George Love, then the president, I believe, of Consolidation Coal Company, and with Mr. Pursglove, who was then vice-president of research. We had two or three meetings with them exploring the possibilities of their making an experimental effort with regard to this sort of process at some mines in this area in which we might experiment with burning the char.

It did not seem to them to be of particular interest and they didn't actually show much interest in this for a market for their coal, with or without the carbonization. I would say in total less than one per cent of TVA's coal supply has come from Consolidation Coal Company.

Q. What about the Pocahontas?

A. Well, Pocahontas, of course, later became a part of Consolidation, but when it was operating as Pocahontas it acquired some properties in east Tennessee, the Moore properties, and when those properties were acquired, Mr. Matthews who was then president of Pocahontas, and one or two of his people and some of us had some discussions.

Mr. Matthews told me that they had acquired these mines and they had taken options on a good deal of additional coal and they had been doing some marketing research, as he called it, which led him to feel that this was going
4264 to be a good area for them to produce and sell coal

and one of the reasons that he gave for this was not only that he thought there was going to be a growing market, which we very much convinced, but he also thought it was going to be a market of rising coal prices, and I recall having rather a spirited conversation with him about this, because by this time I had become convinced this was not the case and I wanted to be sure in my own mind that in considering the many operations in the area that they weren't doing it under any misapprehensions that the price of coal would be, likely to be considerably higher than it was and I was convinced the coal costs were going to be lower than they were.

I don't know that this conversation had anything to do with their plans, but I do know that they did not proceed with an expansion program in the area. They did continue to operate the Moore mines, but they were much more interested in coal production and markets in other parts of the country than here.

When I said that Consolidation supplied us less than one per cent of our coal, that would be enough to cover Pocahontas, too. I think Pocahontas and Consolidation together amounted to less than one per cent of our coal.

Q. What about Island Creek Coal Company?

A. Well, they were entirely unimportant in our picture. Their operations were to the east and north of this
4265 area, that is, until recently when they acquired the West Kentucky Coal Company. They played no part in the market.

Q. What about Peabody?

A. Here it may be important, I think, to distinguish between Peabody Coal Company as it existed in the early fifties and later.

I remember at one time when I was in Chicago on other business I called on Mr. Stuyvesant Peabody, who was president of Peabody Coal Company, and I guess the simplest way to express my reaction was that I went away

with a feeling he was much more interested in polo than he was in coal.

The company did have some properties that were in this area, but they just didn't seem to be interested in developing them, and my impression was that the company was dying on the vine and about the middle of the fifties the Peobody Coal Company merged with the Sinclair Coal Company, which was a company in which the moving spirits were the Kelce brothers.

This was a company organized in the Southwest, I think, and became quite active in the Midwest and then they and Peabody merged and the Kelces became the managers, the leaders of the new organizations, and this newly re-organized Peabody Coal Company was a very dynamic company, one of the coal companies actually to which I would apply that term. It was very interested in responding to the new market that was being created by our power systems,
4266 including TVA. They expanded very rapidly over the next — well, ever since their production of coal for power systems, their sales and earnings have gone rapidly from year to year as a result.

The Peabody Coal Company became quite an important supplier of TVA. Before I left TVA we worked out a contract with them for coal for the Paradise Steam Plant and that represents perhaps one-sixth, more or less, of TVA's total purchases.

Aside from that, I would say that their supply to TVA grew from probably less than 5 per cent to around 10 per cent or more of TVA's supply during that period from '52 to '62 that I have particularly in mind.

Q. What about the Pittston Company, Clinchfield Coal Company?

A. They were of moderate importance in our coal supply picture, I had a number of discussions with Mr. Hughes, president of, then president of Clinchfield and some of his people, both with regard to coal in northern Tennessee and in Virginia. I guess that we were discussing with them more

the coal in Virginia. We were adding to our system the John Sevier Steam Plant in east Tennessee, partly because of the location it offered with respect to our loads and partly because it expanded our coal supply into Virginia. It supplied,

it is supplied by coal from Virginia and east Ten-
4267 nessee and east Kentucky and the Clinchfield Company was one of two companies, along with General Coal Company, that had such major properties in southwestern Virginia.

We found that the Clinchfield Company had in mind developing a major mine, which they developed actually largely to supply power plant built by the Appalachian Power Company in the upper reaches of the Tennessee Valley, upper Clinch River in Virginia, and since the mine was opened up to supply primarily that market we didn't get any long-term continuing supply from them, but we did get substantial quantities of coal from that mine while the other market was expanding and growing.

Now, I am referring to the Moss No. 3 mine, which is one of the big coal mines of the United States. Clinchfield probably supplied us somewhat less coal from that area than the General Coal Company, but between its Virginia and Tennessee supplies, it probably supplied us not far from 5 per cent of our total requirements.

Q. What about West Kentucky Coal Company and its subsidiary, Nashville Coal Company?

A. Well, looking back to the time when they were separate companies, and referring to Nashville first, Nashville Coal Company was essentially Mr. Justin Potter, who was a very dynamic person. I think it is fair to say that he

was philosophically opposed to TVA. He didn't like us.
4268 He would occasionally buy space in newspapers to run advertisements criticizing TVA, and I think probably he always preferred selling coal to other people than selling it to us, and he sold us only coal perhaps that he couldn't sell to somebody else, but he was a natural-born

salesman. He always had a lot of coal to sell and he was usually trying to sell us some, and he did.

He would have preferred to negotiate rather than to respond to bid invitations, and I think it would have been interesting if we, if our policies had permitted us to negotiate it would have been interesting to negotiate with him, I am sure, perhaps it would have been mutually beneficial, but he did respond to a number of our bid invitations, and I think perhaps was supplying us somewhere close to 5 per cent of our requirements when he sold his company to West Kentucky Coal Company.

West Kentucky Coal Company was quite different than Nashville Coal Company. It was a more conventional type of operation. I think at the time that our market began to grow rapidly, West Kentucky Coal Company probably had about as large, and not fully loaded, coal mining capacity as any potential supplier we had and they were important in our coal supply picture, but they did not seem to me to be as interested in the new type market that the power systems were creating as compared to the older type of
4269 markets as some of the other companies.

Their bidding was, I'd say, somewhat unimaginative. They would tend to repeat the former bid, even if it had been completely unsuccessful. I mention this, perhaps I am making too much of a point, but the contrast with Mr. Potter and Nashville Coal Company before they combined was so marked that Mr. Potter was always coming in with a totally different kind of a proposal than he had made before, whereas West Kentucky was usually coming in with the same proposal they made before.

The West Kentucky Coal Company, even after it had absorbed Nashville Coal Company and, therefore, further increased its potential supply to our market, probably represented between 5 and 10 per cent of our supply perfectly in the years from '52 to '62.

I think that perhaps they have grown to a somewhat larger supply since because for a couple of long-term con-

tracts that were made about the time — about the end of this period, but during the period that I am most familiar with I'd say 5 to 10 per cent of our market was supplied by West Kentucky and Nashville together.

Q. What about Pittsburgh-Midway Coal Company?

A. Well, they were somewhat less important in the picture. As I recall having a conversation with Mr. Spencer, the president of Pittsburgh-Midway rather early in
4270 the fifties, my impression was that he was more interested in the Spencer Chemical Company than the coal business, which was Midway, and that he was quite candid in saying to us that he wasn't particularly interested in this new kind of bulk low-cost market, that he was more interested in the higher priced market, especially coal and so on.

I think they've become gradually more interested in the market, but they supplied perhaps 2 per cent of our coal requirements during that 10-year period. Two per cent, of course, is quite a lot of coal in terms of tonnage, but it was a fairly small part of the market.

There were quite a lot of other companies who supplied that much or more.

The Court: How much?

The Witness: I say two, two per cent or more or less.

By Mr. Rayson:

Q. You say there were some other companies. Would you mind commenting on those other companies who were principal suppliers of TVA?

A. Yes. Let's see, I guess I mentioned one, General Coal Company, which was one of our suppliers in Virginia. They supplied certainly more than 2 per cent, maybe 3 or 4 or 5 per cent of our coal. There were a number of others in
4271 that general size range. Tennessee Products and Chemical was one, Old Ben Coal Company was another, Freemon Coal Mining Company, Lafayette Coal Company, Coiltown Mining Company, Bell and Zoller, perhaps United

Electric, I am not sure if they were quite as big as 2 per cent, maybe close to it, Tennessee Consolidated was probably about the same, about the same order of magnitude United Electric, close to 2 per cent. There were, there may be others I am omitting, but those that I have just named, for example, supplied, I would say, as much, maybe a little more in total than the ones that you were asking me about before.

I would say that you might say perhaps the ones that you named supplied roughly a quarter, the ones that I have added, the names I have supplied, roughly a quarter, and the other half of our total supply was from the large number of companies varying in size from about the level in size of sales to us—about the level of something of some of these we have mentioned on down to very smaller quantities, I might say.

Q. Mr. Kampmeier—

A. (Interposing) I might say in that connection that the concentration of coal production sales is, of course, it may be obvious from what I am saying, is very, very much less than some other commodities that, for example, the TVA bought in quantity. If you refer to electrical equipment, cement, or automobiles, or whatever the TVA might be buying from two or three or half a dozen suppliers, in the case of coal we bought from a great many.

4272 Q. I take it you followed the bidding and the cost of coal during this period rather closely?

A. Oh, yes, yes, very much so.

Q. Did you see any indication that these companies that I named, either individually or as a group, were making an effort to hold down the price of coal to TVA artificially?

A. No, I should say not. I think it would be correct to say that all of our coal suppliers, to the best of my knowledge and belief, always tried to get the best price they could, the highest price they could. I think this was not only natural but quite obvious was the case.

Q. Mr. Kampmeier, have you ever met John L. Lewis?

A. No.

Q. Or any of the other officers of the United Mine Workers?

A. No. I remember that there were some people from the research staff of the United Mine Workers, I don't know whether they were officers or not, who called on us two or three times in connection with some articles that they were developing for the, I think it is the Journal of the United Mine Workers, in which their theme was "Coal by Wire."

They were showing that there was a going market for coal to produce electricity and that in this way coal
4273 would be perhaps recapturing the heating market, for example.

Well, we were very happy to talk with them about this because we felt that TVA was not only an outstanding but the outstanding demonstration of what they were talking about and, frankly, I hoped that they would give a somewhat more favorable picture of TVA than it seemed that the United Mine Workers had over the years, dating back to the time when they criticized the creation of TVA and the building of dams, when they thought it would be much better if someone would build steam plants.

We had hoped that by giving these representatives of the UMW some extensive information about the growing market for electricity and coal in this area that perhaps they would present a more favorable picture of this area in the Journal.

I was a little disappointed because I don't think the articles even referred to TVA.

Q. Well, apart from those people did you ever have occasion to talk with other people who were members of or representatives of the United Mine Workers?

A. Yes. There was some of the local representatives in the southern Tennessee coalfields, local representatives of the UMW, who called on us at least a couple of times, asking

how they — what we thought about the opportunities for southern Tennessee mines to sell more coal to TVA.

They were unhappy about there being less produc-
4274 tion, less employment in the southern Tennessee field than they would have liked to have seen, or most any of us would have liked to have seen, and they wanted to know what we thought about the opportunities of that field to sell more coal to TVA.

We told them that we thought that the area needed to strengthen its competitive position by seeing to it that it didn't lag too far behind in modernizing its facilities and its productivity.

We told them that the Widows Creek plant, which by then was usually the plant with the highest coal cost of any in the system, that the possibilities of expansion of the plant, the possibilities of the level of use of the plant, the degree of loading of the plant, would be affected, among other things, by relative coal costs, and, therefore, it was important that the area was to supply us more coal and we thought it could supply us considerable more coal, that the coal be competitive.

Q. Do you remember when this meeting occurred?

A. Approximately, because it occurred some months before we did expand, begin expanding the Widows Creek plant. We did make some additional new major coal contracts in the field, it was probably early 1957.

Q. Now, you said something about explaining to these local representatives the capacity factor that these
4275 plants were operating, that the level at which Widows Creek was operating was affected by its coal costs in comparison with other plants.

Would you explain that?

A. Yes. We tried to explain to them the typical steam plant doesn't run continuously at full load. As I mentioned earlier, there was a period in which TVA steam plants, there was a period shortly before these people were there to see us in '54 to '56 when TVA steam plants were operated

nearly continuously at full load, which is a very exceptional situation.

The reason, of course, is why steam plants don't and can't normally operate continuously at full load is that the loads themselves don't behave that way. People turn off the lights when they go to bed, the industries shut down, many of them, at night, the loads are much lower at night than they are in the daytime, the loads tend to be lower in some seasons of the year than others, so there is a highly variable load and the production has to vary as the load varies, and in addition to that, it is necessary to have reserve capacity, or that is highly desirable.

I would say, only say it up to 1954 to '56, we practically operated without any, but the normal sound utility practice, of course, is to have a margin of reserve capacity to meet unexpected load changes and to protect it against
4276 equipment being out of service and so on so that when you take account of the reserve capacity and the variations of the load, the typical steam plant can operate at, say, 50 per cent capacity, the capacity factor being the ratio of the average load to the maximum capacity.

The TVA system, when the first of these new steam plants was being added, when the hydro plants could take the variations of the load, the steam plants couldn't be fully loaded. When the AEC load was building up faster than we could keep up with it, when we were relying on purchases from outside the area to take the place of reserve capacity, during that period and under that special condition TVA steam plants were operating at very high capacity factor, but immediately after that, when we were able to catch up with the demand, the capacity factor got to about 75 per cent on the average for TVA steam plants, which is still unusually high compared to most of our systems, and the load factor, capacity factor, of our Widows Creek Steam Plant dropped to about 50 per cent, which is more nearly typical of steam plants generally.

Q. Why do you say that the capacity factor at Widows

Creek was lower at this time than at other plants as a group?

A. Well, because of two or three things. The plants nearest the key load, the AEC load, and the AEC
4277 load, unlike most power use, is an around-the-clock load, 24 hours a day. The plants nearest those very large continuous loads operated more nearly continuously. This is the Shawnee plant in particular near Paducah, and to a considerable degree the Kingston plant near Oak Ridge.

These brought up the average for the TVA system, but the other plants on the system which were operated, whose operations was determined important largely by the normal type of loads in the vicinity of the plants, Chattanooga load being the main load near Widows Creek, for example, and the Chattanooga load being the typical utility load, those plants could not as usefully operate at as high a load factor unless there were some economic advantages in terms of coal costs or whatever to improve the factor.

Well, the reverse was true, that Widows Creek had, as I think I mentioned earlier, had the highest coal costs of about any of the TVA plants, so rather than it being desirable to concentrate more generation at Widows Creek and let other plants carry more of the reserve and so on, the reverse was true, Widows Creek was one of the plants where it was desirable to carry no more load than necessary in relation to the loads in the neighborhood, so that the Widows Creek operation was more nearly typical of steam plants generally throughout the country.

Q. Did you have an occasion to discuss these con-
4278 siderations with the Southern Tennessee Coal Producers at about that time?

A. Yes; yes. There was considerable interest in southern Tennessee in trying to build greater sales of coal and the southern Tennessee producers were interested in the possibilities of not only new contracts but longer term contracts than they had had.

They told us that if they had longer term contracts this

would help them to justify the investment in modernizing their operations and this was of considerable use to us because we thought that southern Tennessee in particular needed to modernize and increase its productivity, and so we discussed with them the possibilities of inviting some bids for longer term contracts and, in fact, did so later in that year.

Q. Was there any talk on their part, on the part of the coal producers in southern Tennessee, that you should run Widows Creek at a greater level, notwithstanding these considerations that you have mentioned?

A. Yes. There were people who, notwithstanding, I am sure, the economics of the power system or the nature of power loads, felt that we were deliberately operating Widows Creek at much less, continually much less load than we ought to be doing. We were discriminating against the southern Tennessee producers and we had com-
4279 plaints to the Governor and the Congressmen and so on on this score. We had a lot of people telling us that we ought to run Widows Creek more heavily than we were. We had been in the past two or three years and I guess it's natural that people thought it would be nice if we would continue to.

Q. Did you ever threaten the southern Tennessee operators, or any other group of operators, with shutting down or reducing the operations in one of the plants unless they cut their price of coal?

A. No, hardly. If there were any threats, it was in the other direction. We nearly ran out of coal a time or two. We were threatened with having to shut the plant down, but we would hardly have considered that it was an appropriate way for us to buy coal to threaten anyone. We were relying on, as I said earlier, on competition to provide us with an adequate coal supply. We certainly tried to make it very clear to people in southern Tennessee and people supplying coal to all of our plants that this was an interconnected power system in which the plants, the operations

of the plant was determined by the relative economies of the plants and that if a plant became less economical to operate than others because of its relative coal costs, transportation costs, efficiency and other factors, that this plant naturally would be operated less heavily than other plants that might be operated more heavily.

4280 We tried, I think, to make it very clear that this was not something which was done capriciously, however, or arbitrarily or with the purpose of putting pressure on anybody. On the contrary, we took pains to explain that these determinations were made by feeding data into an electronic computer and the computer said, "Taking account of transmission losses, coal costs, and so on, the load on such and such a plant the next hour ought to be so and so." And this was the way it was determined.

Q. Following this policy was the amount of coal used at Widows Creek in the late fifties reduced from the amount that had been used in the middle fifties?

A. There was a reduction in use in about the middle fifties. There was a period of very heavy use from 1954 to '56 when the initial units that were installed about '54 were operated very heavily, as I said, as all of the TVA plants were in the effort to try to keep up with the growing loads of the Atomic Energy Commission.

Then there was a reduction in the use at Widows Creek as those same units were operated less heavily or more normally. Then we began expanding the capacity at Widows Creek and so toward the end of the fifties with the new and additional generating capacity added to Widows Creek the use began to rise again, and I don't recall at the moment whether it rose to about the same or higher levels

4281 than before.

Q. Did you have occasion to state your views and the views of the TVA on this general subject in 1957 to Senator Kefauver?

A. Yes, yes. He had been one of those to whom some of the people in the southern Tennessee field were complain-

ing, asking that he do something about it. I am trying to find the word. I want to say "forcing," but I suppose that would hardly be the proper word.

He tried to find some way to lead us to increase our use of coal at Widows Creek.

Mr. Rayson: Your Honor, I wonder if this might not be an appropriate place for a recess?

The Court: All right. Take a 10 minute recess.

(Thereupon, a recess was had.)

By Mr. Rayson:

Q. Mr. Kampmeier, I hand you what purports to be a letter addressed to Senator Kefauver and I will ask you if that is a letter that you wrote to him at that time concerning this matter?

A. Yes, he had had a letter from Mr. Stokes, attorney for Tennessee Consolidated Coal Company, I believe, commenting on the supply of coal to Widows Creek and suggesting that Tennessee Products should be given a preference over coal from other fields, whether or not
4282 the cost of coal to TVA from southern Tennessee was lower than other coal and this is in response. Senator Kefauver had asked me to comment on the letter he had from Mr. Stokes and this endeavored to do so.

Q. Would you introduce that as an exhibit to your testimony?

The Court: Exhibit 377.

(The letter referred to above was marked D377 and received in evidence.)

Mr. Rayson: Your Honor, I'd like to read this letter. Dated March 29, 1957.

"To the Honorable Estes Kefauver, Senate Office Building, Washington, D. C.

"Dear Senator Kefauver:

"Thank you for bringing to our attention, through our Washington office, comments you received from Mr. Stokes concerning TVA and its coal supply. We are always glad to have such comments and to give you our reactions.

"Mr. Stokes referred particularly to the coal furnished to our Widows Creek plant by producers in the Palmer-Whitwell area, and the competition they face from western Kentucky operators. The southern Tennessee producers, in spite of their thin coal seams, have been quite successful in this competition. They furnished 84 per cent of the Widows Creek coal in 1954, 90 per cent in 1955, and
4283 82 per cent in 1956. Most of the remainder of the recent supply has been purchased from western Kentucky to fulfill coal and barging requirements made because of irregularities in the supply from the Palmer-Whitwell area that were serious enough to threaten the exhaustion of the Widows Creek coal stockpile.

"The western Kentucky coal we buy, like the southern Tennessee coal, is produced in accordance with the health and safety provisions of the Walsh-Healey Act and with not less than the minimum wages promulgated under that Act by the Secretary of Labor. Most of the coal from both fields is also produced under labor contracts with the United Mine Workers. The important difference between the two fields is not therefore in the wages and benefits the workers receive but rather in the difference in productivity to which Mr. Stokes refers. As he points out, a southern Tennessee miner may produce 10 tons per day and western Kentucky miner 20 tons. On this basis the labor cost in a ton of Tennessee coal is about twice as high, perhaps as much as $2.50 a ton versus $1.25, plus 40 cents in each case for the UMW Welfare Fund.

"Such a difference is indeed a serious matter to the southern Tennessee producer, especially as wages increase. The April 1 increase of 80 cents a day is equivalent to about 8 cents a ton in southern Tennessee versus 4 cents a
4284 ton in western Kentucky.

"Nevertheless, Mr. Stokes may be painting just a little too black a picture. As he mentioned, there is a large difference in transportation cost from the two fields to the Widows Creek plant. The difference hardly 'fades

into nothing'; it still is larger than the difference in labor costs. Moreover, TVA pays a premium price per ton for southern Tennessee coal because it has a high heat content.

"We hope and believe that in the very fact of the present relatively low productivity of these mines lies their greatest hope for the future. The manufacturers of the most highly mechanized mining equipment have gradually been adapting their machines to thinner and thinner seams. We have been following their development work, as have Mr. Stokes' clients. We believe that, perhaps with the help of such equipment, the coming years will see a marked increase in the productivity of the mines in the Palmer-Whitwell area.

"It is important that this should be so, not only because of the competition for the Widows Creek market but for additional reasons. Daily and seasonal variations in coal and the need for maintaining some reserve capacity keep any power system from operating all its generating units at full load all the time. The Widows Creek plant operates at a less continuous load *that* most of our steam plants, and

therefore burns less coal than it might, simply be-
4285 cause it has a higher fuel cost than other plants. If coal cost less at Widows Creek, we would pay more. Most important of all, for the future, is the amount of new generating capacity TVA will build in any general area will be affected as much by the cost of coal as by any other factor.

"To return to Mr. Stokes' argument, I hardly believe that he would like to see it carried to its logical conclusion. He proposes a policy of buying Tennessee coal for the Widows Creek plant in preference to west Kentucky coal, subordinating somewhat to such a policy the principles of competition and supply which TVA follows as a matter of law as well as sound business judgment. Were this done, the next logical step would be to supply Widows Creek, an Alabama plant, with Alabama coal in preference to Tennessee coal. Heretofore, mines in the even thinner seams of the

northeastern Alabama section of the Tennessee Valley have not been able to compete successfully at the Widows Creek plant, close as they are to it, with mines in the Palmer-Whitwell area; with a small subsidy perhaps they could do so."

That is all of the letter I care to read.

By Mr. Rayson:

Q. During this period, Mr. Kampmeier, did the fluctuations in the availability of power generated by your hydro system have anything to do with the coal purchased by TVA?

4286 A. Oh, yes. In at least a couple of ways. One is that the amount of energy available from the hydro plant, of course, varies somewhat, depends on whether we have a wet year or a dry year, and the difference is enough to affect the coal purchases.

I remember, for example, that about the time that we finally caught up on trying to build capacity fast enough, steam capacity fast enough to have enough power to supply the Atomic Energy Commission without having to go out and buy high-cost power to help do it, we not only caught up but we then had a year of very wet conditions, very heavy streamflow, and so the steam generation not only began to be at a lower capacity factor than it had been because of normal, the way that steam plants operated, but the level of load actually was reduced somewhat further because we had good hydro conditions, but beyond that, and here I run the risk of maybe getting into too technical a discussion, but I should at least try to say briefly that the difference in characteristics between hydro plants and steam plants and the ability of hydro plants to vary their loading more easily than steam plants, also has a bearing on how the system is operated.

One of the things that the computer has to take into account in determining the loading of a steam plant is what the condition of the reservoir is at the hydro plants

4287 and how much load the hydro plants can carry and so on.

During the period from '54 to '56 we had not yet added so much steam to the system, steam capacity, but what the hydro plants were still large enough in proportion to steam plants that they could pretty well handle the hour-to-hour variation in the load with the team operating more or less continuously.

As the steam system got bigger and bigger, the hydro had to be operated or was less and less able to take care of all of the variations of the load, and this is another reason why more of the load variation had to be picked up by the steam, so all of these things have to be considered together as all part of the total picture, but I don't know that we need to try to elaborate on that.

Q. All right, sir. Now, what has been TVA's attitude toward the length of term for which it preferred to make coal contracts over the years?

A. Well, this has changed somewhat over the years. Basically what they tried to do was to encourage the length of term of contract that would encourage low-cost coal, efficiently mined coal, and we have felt that sometimes this is best done by not making the contracts very long and at other times perhaps by making them longer than we may have been. That is probably pretty unclear. Let me try to be more specific.

4288 In some of the early contracts that were made about 1951 TVA was trying, when TVA was trying to build its big new steam plants, a few contracts were made for terms up to about 10 years and it soon developed that these contracts quickly got out of line with the market, you might say, through the effect of this new type of marketing opportunities for bulk low-cost production the market prices of coal were going down, but the price of coal under these contracts was going up because of the way the escalation provisions in them had been worded and written, and so in rather short order the price under the contract was unrealistic in relation to the market.

We did not follow the practice, as many power systems

did, of then going to the supplier and saying, "Look, we made a bad deal, how about cutting the price."

But we were stuck with it, with the increased price.

As a result, we felt that we had better adopt a go slow policy on making long-term contracts and so until we knew more about what the trends in productivity seemed to be and what sort of escalation provisions were workable and acceptable and so on.

So from about '51 to '57 nearly all of the contracts we made ranged in term from six months to three years. We did give the suppliers freedom of choice within that
4289 period of a range.

We didn't exclude the possibility of somewhat longer terms, but we expressed a preference for keeping the terms in those limits.

We found that the suppliers by and large also preferred relatively short terms, even though they could offer up to three years, most of the bids were for short terms. They, too, had a sort of feeling that it was a changing situation, they tried to determine what would lay ahead in this new type of market.

By about 1956, '57, we found an increasing desire on the part of suppliers to make long-term contracts again and we were satisfied that we could reasonably make some longer term contracts. We thought we had learned enough about escalation and so on to permit us to write sensible long-term contracts, and so in 1957 we told the suppliers that we were ready to experiment again with some long-term contracts.

We did not want to make long-term contracts just for the sake of a long-term contract, but we thought the cost would continually go down and not up and it wasn't to our particular interest to make long-term contracts, but we were interested in making long-term contracts where this would provide an additional justification to the supplier to increase into—make large investments in moderniz-
4290 ing his facilities and thereby increasing his efficiency

and wherever this could be reflected in not only a more attractive price but more attractive escalation provisions.

So at that time, in 1957, we invited some longer term bids. We particularly called the attention of bidders to this, and I remember particularly doing so in the case of southern Tennessee suppliers, to the fact that we wanted very much to have them make their bids as constructive as possible in terms of coming up with ideas and suggestions in the direction of escalation and productivity and reflecting productivity in the contract and so on as any of them could, and we would be willing to make a few experimental contracts, you might say, of longer term, and then as the subsequent years went along we made more and more longer term contracts and by the time that I left TVA probably, oh, it is a guess, a third or so of all of the coal was being bought under contracts of five or ten years or so, whereas for some time nearly all of it was bought under shorter term contracts.

* * * * * * * * * *

4291 Q. What about in the later years?

A. In the later years there were actually cases where preference was expressed for the longer terms and a contract offering longer term was evaluated as having a differential in its favor as compared to the shorter term contract.

I would say that by and large the general feeling at the time that I left TVA was that we should be buying increasing proportions of our coal under long term contracts.

Q. How long a term did you indicate that you would consider?

A. Well, usually up to about ten years, sometimes fifteen. There were at least a few contracts made of fifteen years or so.

Q. Have you prepared a chart showing the escalation of coal prices over the last several years?

A. Yes. There was a chart present. This was a chart that we prepared initially about the time that we were making these, inviting these experimental longer term bids.

Q. I show you a chart there. Have you prepared that chart recently?

A. This chart was originally prepared under my
4292 direction in 1957 and I have recently extended it.

Q. All right, sir. Would you introduce that chart as an exhibit to your testimony?

The Court: Exhibit 378.

(The chart referred to above was marked D378 and received in evidence.)

A. Perhaps I should explain that one of the things that we were finding was that coal prices tended to follow quite closely the trend of bulk commodity prices generally, that is, coal is one of the many wholesale commodities ranging anywhere from steel and cement to wheat and corn, which when one looks at the overall price trend we found that coal prices followed the overall price trend of all commodities very closely and had for many years and so we had begun to encourage, about this time did begin to encourage our coal suppliers to base escalation in a contract on an index of prices generally.

We had experimented with various types of escalation and continued to use other types, but we expressed some preference for this type of escalation where the only adjustment in the price of coal under a long-term contract will be determined by changes in the price index.

This would protect the supplier against inflation, it would protect him against any major changes in market trends, as indicated by past relationships, so this was
4293 the purpose of this chart and this was one of the things which we called to the attention of bidders in '57 when we were prepared again to invite some long-term contracts.

Q. Do you recall discussing term contracts with southern Tennessee producers in 1957?

A. Yes.

Q. Do you recall whether southern Tennessee producers were successful in obtaining contracts in that year?

A. Yes, they were. They responded with interest to our invitations. As I mentioned, we were particularly interested in southern Tennessee, I suppose partly because of the various complaints we were getting about southern Tennessee market for coal, but basically because we felt that here was a field which was laying behind in mine productivity and the future of which in our market was likely to depend very much on increased productivity and southern Tennessee producers had expressed a good deal of interest in investing more modern operations if they had some large long-term contracts as justification for doing so, and they did respond to the invitation, but we were somewhat disappointed in the response.

They did not want to make as all out an effort as we would like to see them. They wanted to limit their commitments on what they would do in the way of modernization, and so the contracts that were made were conditional
4294 conditions. They were conditions which were conditioned upon the length of term, depending upon the extent to which the producers did modernize and improve their productivity.

Q. Do you know whether TVA would have been willing to—

A. (Interposing) Excuse me, I didn't get that first.

Q. I say, was TVA then willing to work out contracts with these producers without those productivity features?

A. Short-term contracts, yes; long-term contracts, no.

Q. Why was that?

A. Well, because, as I had indicated in my letter to Senator Kefauver, if a wage increase meant that the cost of coal in southern Tennessee went up twice as fast as in west Kentucky, and we made long-term contracts in which

the productivity would remain at very low levels, and in which the suppliers, in order to be kept whole, would need price increases geared to wage changes related to that low-level productivity, and if this meant that every time there was a wage increase that there would be twice the increase in price as in the field with higher productivity, long-term contracts were not very attractive.

In fact, the matter is that even this gives too favorable a position. Of course, what was happening was that
4295 productivity was increasing rapidly enough in most of the fields so labor costs were not going up, they were going down. At the time of the wage increase, the day that an increase took place there would be an increase in cost, but before the next wage increase came along the increase in productivity meant that the labor costs were down and not up.

If labor costs were going down and coal costs were going down in the areas of high productivity, then to make a long-term contract geared to low productivity would either end up being very unfair to us or very unfair to the producer or to both of us, in terms of maybe not unfair, but at least economically costly to one or the other or both and this we wanted to avoid.

Q. Did you make any investigation as to the feasibility of the proposals of southern Tennessee producers in connection with the 1957 contract?

A. Yes. I personally visited some of the mines and places where more highly mechanized equipment had been installed and relied principally. I relied principally, however, on the advice of the mining engineers on my staff as to what the opportunities were for increased productivity and what the likelihood was of increased productivity being the result of the particular steps that were being contemplated.

Q. Do you recall where these mines were, were
4296 they on Tennessee Products' land?

A. The only fairly clear recollection I have of the mines that I visited at that particular time was one new

mine that was just a small new mine that was just being opened up by Tennessee Products. I did visit other mines of Tennessee Products and of the Tennessee Consolidated at different times, but I can't remember whether it was at this time or not.

Q. How did these contracts work out from the standpoint of TVA, the 1957 contracts?

A. Well, not too well. Our experiment was not too successful. The steps that were taken toward increasing productivity were, in our judgment, much too meager to bring about the increase in productivity that had been estimated by the companies in their projections.

Mr. Rowntree: If Your Honor please, we object to the last statement. I think the previous answer, or the answer to two or three questions before, showed that his observations with respect to the mechanization program on mining principles were based upon the statement of the TVA mining engineers and his staff and, therefore, we do not believe this witness is competent to state any opinions or conclusions as to the techniques adopted on this contract.

Mr. Rayson: May we ask two or three questions of Mr. Kampmeier before we proceed any further, Your
4297 Honor?

By Mr. Rayson:

Q. Mr. Kampmeier, were you receiving reports from these companies as to what they were doing?

A. Yes.

Q. In respect to modernizing their mines?

A. Yes. Reports as to what they were doing and reports as to what they were contemplating doing.

Q. Did your own engineering staff make any examinations of these properties?

A. Yes.

Q. Did you and your staff make any analysis of these developments with respect to what these companies were doing and what they said they were going to do?

A. Yes. We discussed the problems at some length.

Q. Are you basing your judgment on these matters in expressing your opinion as to whether these contracts were successful or not?

A. Yes, plus the evidence of resulting productivity figures that were provided to us from time to time by the company.

Mr. Rayson: I think, Your Honor, that this is clearly competent. This is certainly the person who is responsible for evaluating these contracts. We are not offering Mr. Kampmeier as an expert on mining equipment and that sort of thing, however, we certainly believe he is eminently qualified in his position as a purchaser of coal and that sort of thing.

4298

Mr. Rowntree: We do not object to the answer with respect to the failure of the experiment, but we do object to any conclusions drawn by this witness with respect to the practicability, the advisability, any engineering decisions made with respect to what type of equipment should have been put in those mines.

The Court: I believe I will sustain the objection to the extent that the witness may describe his opinion as to whether the efforts were taken were meager or not. He can state what, to his knowledge, was done or was not done and what the results were.

By Mr. Rayson:

Q. All right, sir. My question was whether these contracts, how these contracts worked out from the standpoint of TVA. I will repeat my question to the witness.

A. Well, they did not work out satisfactorily or very satisfactorily. The contract with Tennessee Products continued on the basis that it was meeting the minimum requirements of the contract as to steps towards expected increased productivity. The contract with Tennessee Consolidated expired under its terms after a couple of years because TVA had not been satisfied that even the minimum requirements for meeting the expected increases in productivity were being met.

4299

Q. Had you expected those contracts to be successful and fully performed at the time they were let, Mr. Kampmeier?

A. Oh, yes. We not only made the contracts in expectation that they should lead and would lead to successful results, but we were sufficiently confident that it would be to the interest of the producers to see to it that they achieved the indicated results so that we based a very large expansion of the Widows Creek plant on the expectation that the southern field would modernize its coal production operations and would increase the productivity of its operations and would provide us with a more dependable and lower cost fuel supply.

The expansion of the Widows Creek plant was a very major investment. We were investing some 60 or 70 million dollars adding to that plant a generating unit which was then the largest generating unit ever installed anywhere in the world, and that investment was made in the expectation that there would be — not anything like that big an investment but a very substantial investment made by the coal producers in increasing the productivity of their operations.

We were expanding the capacity of the Widows Creek plant by 60 per cent, this one unit that we were adding was as large as four of the — of any four of the first six units that had been put there, increasing the capacity by
4300 two-thirds, and we were expecting the capacity of the coal producers and their efficiency to be increased correspondingly.

Q. By the way, how did the efficiency of that new unit at Widows Creek compare with the efficiency of the older units?

A. It was substantially more efficient, although it was only perhaps five or six years newer. The efficiency of generating equipment continues to improve as the efficiency of coal mining equipment and other equipment continues to

improve. We were able to build a more efficient unit. We expected that this would help to make Widows Creek a plant which could operate at somewhat higher capacity factor, again taking advantage of more efficient units, taking advantage of the lower cost coal that we expected to be able to get, and thereby resulting in a considerable expansion of the power generation at the plant.

Q. Prior to the addition of this new unit around 1957 or '58, did you make any general comparison of the efficiency of the Widows Creek plant with regard to the other steam plants in the system?

A. It was slightly less efficient than the average. At the time that—well, the picture kept changing, of course, because we kept adding other plants and each new plant was more efficient than the old, by and large.

In 1954 Widows Creek plant was about as efficient
4301 as any other system. By 1956 or '57, it was definitely less efficient than the average and then with the addition of this new unit it again became averaging in the new and the old, probably at least equally efficient as the other plants in the system.

Q. Well, to whatever extent there was a relative inefficiency prior to the installation of the new unit, was this one of the facts that the computer took into account in making its determination?

A. Yes.

Q. Mr. Kampmeier, was it your opinion that if the southern Tennessee coal mining had been mechanized that those mines would have remained competitive?

A. Yes. This is our opinion and a very important factor in our consideration of our planning of Widows Creek.

Q. Did the southern Tennessee operators make many of their plans as you viewed it in utilizing or contracting out small parts of its work?

A. Would you repeat that question?

Q. I say, in the plans the southern Tennessee producers

were making over the years that you were dealing with them, did their plans seem to you to include the contracting out of certain of its mining operations?

A. Yes, they did, and there was an element, too, in our discussions with the producers as to their prospect for
4302 increasing their productivity.

We had some rather serious doubts as to whether they could improve their productivity as much as they might as long as they were proceedings with individual mining operations that were quite small, which although susceptible to mechanization would not permit as large or perhaps as modern equipment as a larger mine operation would.

Mr. Rowntree: If Your Honor please, we object to the doubt there with respect to this mine engineering problem of mechanization and proven productivity on a large basis on this seam or on a small basis. I think that goes into the engineering field that is really a hard and tough engineering problem, and I don't think that this witness is competent to express an opinion or doubt about that.

Mr. Rayson: He certainly would be competent, Your Honor, to express an opinion on these matters with respect to the market problem of the Tennessee operators, and that's the purpose for which we are offering it. As I said before, I am not undertaking to qualify Mr. Kampmeier as a mining engineer.

Mr. Rowntree: We have no objection as long as it is limited to doubt as to marketing of coal, but we do object on the basis of mining engineering doubt.

Mr. Rayson: I want to make it clear it pertains to the very contract in which the productivity requirements
4303 were requirements that TVA proposed, and I think that the witness can certainly address himself to that.

The Court: Proceed on the limited basis as suggested.

A. Let me see if I understand the question.

Q. Let me ask you this, Mr. Kampmeier: You do know whether either of these companies, first let me ask you about

Tennessee Consolidated Coal Company, took any steps to overcome these problems as they appeared to you, did you ever talk to any of the officials of these companies, such as Mr. Callis?

A. Yes, we had a great many conversations with the officials of the company. We discussed with them various alternatives that might be pursued for modernizing their operations.

We objected to some of their plans on the ground that they were in effect wanting to obtain a bigger share of our market, they wanted to obtain bigger contracts without proceeding in the way that a company that intended to be a big supplier would seem to us to want to proceed in terms of being able to demonstrate to us a desire to increase in equipment of a necessary scale and efficiency, in terms of being willing to take steps that would correct the deficiencies that we had been experiencing in their supply in terms of variability and uncertainty as to performance.

4304 They had repeatedly failed to deliver all of the coal they had promised to when they had promised to, and sometimes the reasons that were given to us were that they had run into mining conditions they hadn't anticipated, other times they had run into labor conditions they hadn't anticipated, but for one reason or another their performance record was much less satisfactory than most or than we could accept as a continuing thing.

We wanted to be sure that in making a new contract that we were assured of dependability of supply and that the statements that they made to us about the productivity they expected to achieve were likely to be achieved.

The discussions were not satisfying to us. They did not give us the assurances that we wanted and in conversations that I had with Mr. Callis shortly before I left TVA on more than one occasion he told me that the former officers of the company had been entirely unwilling to invest in the

kind of equipment that was needed to produce coal in quantity and with the regularity that our market required.

Q. Did you ever have any discussions with any of the officials of Tennessee Products concerning these matters?

A. Yes, and the situation was not greatly different. Different mainly in degree, perhaps. I won't try to repeat quite at the same length, but the president of Tennessee Products, Mr. Carl McFarlin, Sr., told me that he
4305 was completely convinced that the installation of more modern equipment was a must for them, I remember him making the statement to me on more than one occasion actually that our encouraging them to make their new bid on the basis of planning a more mechanized operation was going to be or promised to be one of the most profitable steps that they had taken in a long time. This was going to cause them to improve the possibility of their operations.

Now, it didn't work out altogether in the way that Mr. McFarlin had indicated to me he had expected it to do. They did not open up a larger modern mine as they were talking about doing. They limited the mechanization of some of the smaller mines and my discussions with him led me to conclude that he was finding that people, you might say both below him and above him, were not in sympathy with the approach that he had been talking about taking with us.

Some of his mining people much preferred to see the company continue to sub-contract with small operations rather than to open larger operation of their own. He had sold, Mr. McFarlin had sold the Tennessee Products' controlling interest in Tennessee Products, which was concerned not only with coal but with production of ferroalloys and chemicals and so on to another concern, which apparently, well, in the first place was not familiar with coal production, was not interested to the same degree that
4306 he was in making an investment in expanding the coal,

expanding and modernizing the coal operations of Tennessee Products.

Q. Well, did you conclude, Mr. Kampmeier, that these two contracts that were let in 1957 were not successful then?

A. I did so conclude that they were not successful.

* * * * * * * * * *

A. Maybe you better repeat your question. Maybe I am not being responsive.

Q. I say, did you conclude that these contracts were not successful in part on the idea that their mechanization was inadequate?

A. Yes.

Q. Mechanization efforts were inadequate?

A. We were —

Mr. Rowntree: (Interposing) Object to that
4307 "mechanization efforts," going into the engineering competency of this witness in the mining engineering phase.

Mr. Rayson: Your Honor, I think that he would be entitled to answer that question as a purchaser of the coal based on his knowledge of the industry, based on his knowledge of what other coalfields were doing and also on his knowledge of what his staff was reporting to him.

Mr. Rowntree: This was a very complex engineering problem, Your Honor, actually we had an expert mining engineering firm to come into this field and try to do it themselves, the most experienced mining engineering firm in this country, in the whole world in this industry, and they thought they were taking adequate steps, but they failed, and the adequacy is an engineering problem, a mining engineering problem, I think it —

The Court: (Interposing) It does seem that you are calling for a conclusion that would be more appropriate from a mining engineer when you speak about an opinion as to mechanization and the extent of mechanization.

Mr. Rayson: Your Honor, let me make myself clear.

The Court: It could be that he could cross examine the witness about it and permit him to testify.

Mr. Rayson: My question is with respect to the 1957 contracts and what these companies did with respect
4308 to fulfilling those contracts.

Now, the matters that Mr. Rowntree is talking about came later in the day. These engineers came in there in 1960 and '61 and were on —

The Court: (Interposing) Well, of course, the witness can testify as to the contracts, as to whether they were complied with and fulfilled and, if not, to what extent they were not fulfilled, if that is your question.

Mr. Rayson: All right, sir.

The Court: Yes.

By Mr. Rayson:

Q. Mr. Kampmeier, you may have answered this, but do you know whether the Tennessee Consolidated contract, the one in 1957, whether it ran a full term or whether it was terminated at an earlier date in accordance with its terms?

A. It terminated after a couple of years in accordance with its terms. The contract had as a target a productivity of 17½ tons per man per day, as I recall, I am quite sure I am right about that.

The company was under obligation to develop specifically concrete programs for a mechanization of its operations and were committed to achieve certain — they were committed to, first, to satisfy TVA that what they proposed would achieve the target results. They were also committed to achieve certain intermediate levels of productivity
4309 by certain times, as I recall, although I am frank to say that I don't recall the contract in detail. I'd have to refer to it to refresh my memory on the precise terms.

In any event, the rate of progress was not as promised and the program that was set forth was not one that we considered adequate.

Q. During the years when TVA coal purchases were

growing, do you know whether there were a number of wage increases in the coal industry?

A. Oh, yes, quite a number, frequent and fairly substantial.

Q. Did TVA object to these wage increases?

A. No, I don't think we would have any justification for objecting. TVA in its own labor relations has always felt that adequate wages and increasing wages were an incentive toward increasing productivity and were justified by increasing productivity and the wages that were being paid in the coal industry were more or less at a level comparable to the wages that TVA paid for what might be considered comparable work.

Q. Mr. Kampmeier, did southern Tennessee during the entire period that we have been discussing, as I say, in 1951 to 1961, did it during that period experience an expanding coal market?

A. The market available to southern Tennessee
4310 field was expanding considerably in the fifties. The use of coal by TVA at Widows Creek, which was a totally new market not in existence prior to about '53, '52, maybe, that plant used more coal during the fifties than the total production of the Tennessee field prior to that time.

In addition, of course, the field still had at least part of its foreign market, which this was a new market, which was totaling all its other markets.

Q. Were there six generating units initially planned for Widows Creek?

A. That's right, six were installed in a very rapid period in connection with the very rapid loads of the Atomic Energy Commission. The last was installed by about '54 or '55.

Q. What was the combined capacity of those units?

A. Approximately 750,000 kilowatts.

Q. When did you start putting in this next unit that you have already mentioned?

A. In 1957, immediately after making these new contracts with Tennessee Consolidated and Tennessee Products.

Q. What was the size of that unit?

A. 500,000 kilowatts.

Q. Now, has there been since another expansion of the Widows Creek plant?

A. Right. There was an additional 500,000-kilo-
4311 watt unit installed about three years after that 500,-000-kilowatt unit to which I referred.

Q. Did you have anything to do with the recommendations made for that expansion?

A. Yes, that was, that expansion was made from my personal and direct recommendation.

Q. Why did you consider it desirable to install so much generating capacity at Widows Creek?

A. Well, the Widows Creek plant is located in a place in the TVA system where it is more frequent, closer by transmission than any other to the loads in the Chattanooga area, the loads of the experimental facility at Tullahoma, the space labs at Huntsville, the location is a desirable one from the load standpoint. The plant has access to coal from southern Tennessee, from northeastern Alabama, to a degree, and from western Kentucky, if need be from other sources.

The southern Tennessee field has enough reserves, although they are rather limited, and is close enough to the plant so that it has always promised to be a fairly economical supply of coal and in addition to that we were able to develop satisfactory economical arrangements for transporting coal to the plant from western Kentucky, so with a reasonable assurance of coal supply and with the advantage this location had from a load standpoint, we con-
cluded that this was the logical place to put those
4312 additional expansions in capacity.

The result is today that the Widows Creek plant is the largest plant on the TVA system, I think the largest plant in the United States.

Q. Is this transportation rate you are talking about the so-called Section 22 rate from western Kentucky that was obtained in August or in the fall of 1960?

A. Yes.

Q. Now, was that a vital factor in your determination with respect to the market at Widows Creek?

A. It was absolutely essential. I could not possibly have taken the position that I did in recommending to the TVA Board that we expand the capacity of Widows Creek except for our having been able to develop that rate. After all, in 1957 we had expanded the plant once with a unit of comparable size, a half a million kilowatts unit, and we did that on the assumption that the coal would be forthcoming from the southern Tennessee field with the types of mining operation that would mean low-cost coal, highly competitive coal or cost and that judgment had turned out not to be confirmed and here was a field which has really very limited coal reserves compared with most of the field in which TVA draws that coal.

Here was a generating unit which we could install at most any point in the system that we might choose
4313 to and if we were not assured of adequate coal supply at Widows Creek it would have been foolhardy to have talked about putting a unit there. We would have put the unit wherever it would be close to an assured supply of coal. We put it there because the loads were there and because we knew that we could get enough coal there if we didn't get it from southern Tennessee we could get it from western Kentucky.

Q. Where did you expect the coal to come from when you put that last addition in?

A. Largely southern Tennessee. We recognized that southern Tennessee has such substantial advantages in terms of distance, lower freight rates, in terms of the quality of the coal and, therefore, the price per ton that it can command that we still expected that it, in due course there would be enough modernization of the coal operations in southern

Tennessee that in all probability the bulk of the coal would come from there, but the important thing was that we had assured ourselves that it didn't have to come from there, we could get it where we needed to get it and we could get it if we needed to from western Kentucky by establishing this freight rate and to confirm what you just said about expecting the bulk of the coal would probably come from southern Tennessee, we took pains — I'd like to point out that we took pains to see to it in negotiating that freight rate that the sliding scale in the rate was not geared
4314 to how much coal we got from western Kentucky but it was geared to how much coal we would use at Widows Creek and bring it to Widows Creek by rail, whether from western Kentucky or southern Tennessee.

Neither the railroad nor we have any desire to force any coal that comes from anywhere else rather than southern Tennessee. We were quite happy to see as much as possible of the coal come from southern Tennessee. I think we probably both felt we would be better off in the long run if the bulk of the coal did come from southern Tennessee.

Q. Who negotiated that rate?

A. The L&N with the TVA.

Q. What individuals were the negotiators for the L&N?

A. Mr. Whitset and Mr. Goering for the L&N and Mr. Whitset was the vice-president of traffic and Mr. Goering was his assistant.

Q. Who was the principal negotiator for TVA?

A. I think it would be fair to say that I was, there were some others who participated.

Q. Do you know Mark Eastin, the president of West Kentucky Coal Company?

A. No. I may have met him once, but I am not sure I ever did.

Q. Do you know if he or any of his associates
4315 played any part in your negotiations?

A. No, they did not.

Q. Do you know Mr. Hoffman, Tom Hoffman?

A. Yes, he was, I think he was the vice-president of West Kentucky Coal Company. He was — he handled their sales to TVA. He was the man that called on TVA frequently in connection with the bids that they made on TVA coal.

Q. Did any representative of any coal company or of the United Mine Workers, did any representative of any coal company or of the United Mine Workers suggest to you or to anybody else in the TVA, as far as you know, what the rate should be in connection with this Section 22 negotiation?

A. No, no one made any suggestions to us what the rate should be. I am not even sure that anyone else knew we were negotiating a rate, although I suppose that perhaps some people did, these things have a way of becoming known.

Q. What about Tom Hoffman, did he have anything to do with it, as far as you know?

A. No, Tom Hoffman was in my office once with Mr. Goering in connection with a preliminary question that was related to this negotiation.

We were discussing the feasibility of loading a trainload of coal in a hurry in western Kentucky, loading a trainload in a day, say, in one day at a group of mines so that coal could be moved rapidly and with a minimum delay in tying
4316 up equipment and, therefore, minimum fixed charges on equipment, and Mr. Goering brought Mr. Hoffman with him to my office one time and we were discussing this on the basis that he might be able to help throw some light on how rapidly some of the larger mines in western Kentucky could load coal and he was present in that one discussion and, as I recall, the discussion was pretty well limited to that subject.

He certainly took no part in any of the negotiations of the rates.

Q. I take it that you in the power supply business were concerned with transportation problems and transportation costs which related to coal?

A. Oh, yes. Coal transportation is a sizable part of the delivery cost of coal, we were very much concerned.

Q. Do you know whether Tennessee Products and Tennessee Consolidated Coal Company protested the adoption of the Section 22 rate in 1960?

A. Well, I think it was very much on the lines of their protest to Senator Kefauver that we referred to earlier. The effort to limit the competition, the effort to make it as necessary for TVA to get coal from southern Tennessee, if they could, rather than getting it from anywhere else.

Q. Do you know whether these companies commenced proceedings before the Interstate Commerce Com-
4317 mission to bar this rate, bar use of this rate or change it in some way?

A. They did. They sought to have the rate thrown out, I guess would be the way to put it.

Q. Do you know what TVA did in those proceedings?

A. TVA intervened. TVA wanted to be certain that if it were going to proceed with the installation of this last unit at Widows Creek that it was going to have this assurance of coal supply and accordingly TVA intervened in the case and I prepared some testimony for the case and participated as a witness in it.

Q. I hand you a paper, which purports to be your verified statement in that case, and I will ask you if you will identify it for us?

A. Yes, this is the statement that I prepared.

Mr. Rayson: We desire to introduce that statement as an exhibit to Mr. Kampmeier's testimony.

The Court: Exhibit 379.

(The verified statement referred to above was marked D379 and received in evidence.)

By Mr. Rayson:

Q. On page 2 of this statement, Mr. Kampmeier, I note that you state that, "The freight rates under discussion were and are essential to expanding the coal market at Widows Creek."

4318 A. Right.

Q. Do you still subscribe to that statement?

A. Yes, indeed. I think that statement covers many of the same points that we have been discussing here, but perhaps more thoroughly and probably better than I am able to do today after three-years' absence from TVA.

Q. Do you know how that case came out, Mr. Kampmeier?

A. Yes. The complainants' request was refused. The result I couldn't tell you in detail, the specific conclusions of the ICC, but I know that they were all quite satisfactory from the TVA's point of view.

Q. Are you familiar with the 1961 contract between TVA and West Kentucky Coal Company which gave TVA an option to buy additional coal at a price of $2.90 per ton?

A. I am somewhat familiar with that contract, yes.

Q. Will you tell us what you recall about it?

A. Well, I think we should go back a couple of years before that, because this coal was coal, as I recall, from the Pleasantview mine of the West Kentucky Coal Company, which was a mine in the No. 9 seam in west Kentucky.

I mention that because some coal has different quality than others, of course, and some coal is more easily marketed than others, and in about 1959, I would say at least, roughly a couple of years before that contract was made to which you refer, Mr. Hoffman, whom you referred

4319 to earlier, representing West Kentucky Coal Company, had been successful in a bid that he had made to offer us some coal from that mine from that seam and a contract was made, I think a fairly long-term contract, for a rather sizable amount of coal, not far from a million tons a year, or for coal from that mine.

Then over the next couple of years of time, Mr. Hoffman was in Chattanooga, or in at least in my office, he called on other people more than he did on me, but he called on me frequently and every time he was in my office he would ask, "What can we do about selling you some more of the coal

from that mine?" He said, "We want to operate that mine at more nearly at full capacity."

And the price that coal was sold, which was $2.90 a ton, is not a very good price from the point of view of West Kentucky, unless the mine has a greater output and all I could tell him was offer the coal on the next bid invitations or, "Why don't you sell it to somebody else?"

And I knew that this was somewhat difficult for them to do because this was not a coal which has very broad markets, it is a fairly poor quality, high ash, high moisture, high sulphur. They were trying to market it apparently without much success, and Mr. Hoffman did offer the coal on several successive bid openings but without success because there was always more coal available at lower prices than we needed, but then coming back finally to the 1961
4320 contract, about which you asked me again, he offered the coal again at the same price.

This time, as had happened in '59, we did find that there was room for some of this coal and the total of our purchase, in the total of our purchases there was not in this instance more coal at lower prices available to fulfill the needs, but we did not want all of the coal that he offered.

He offered two million tons a year, which is a lot of coal, of course. We don't often make contracts that big. He offered, as I recall, a choice of one million or two million tons a year and the TVA felt it could use one million but did not need two million, and so the contract was made for one million and the second million would have been offered, which the company was still anxious to sell, but we didn't need then. It was agreed would be left dangling, so to speak, would be left available to TVA to take later, in other words, the TVA was given an option for the additional million tons a year and TVA had the opportunity of either exercising or not exercising that option during the period of some quite a few months that followed.

Q. How does the $2.90 coal, No. 9 seam, compare with

the coal offered to TVA from the western Kentucky-Illinois field?

4321 Mr. Rowntree: Objection, Your Honor. The question is too general, considering the size of the contract to compare it with any short-term contract or spot contract or bid, and I think it should be based upon a comparison of any contract of similar length or size.

The Court: I believe that would be a matter that would address itself to the weight which should be given to the testimony.

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4322 By Mr. Rayson:

Q. Mr. Kampmeier, I hand you Exhibit P175 and I will ask you to refer to that exhibit. Does that exhibit show the various bids that were submitted to TVA for the latter part of the 1950's and 1960?

A. Yes, it does.

Q. In your testimony this morning, you referred to West Kentucky making several bids of this No. 9 coal at or about the same price at which they had obtained the 1959 contract. Do you find those other bids shown in that exhibit?

A. There were several, I think, and a couple of them are at the moment before me. In February, 1960, for example, I say "for example" because I am confident that there were at least one or two other times in '60-'61 when they offered this same coal. On this occasion they offered, they put in two bids, one offered a quantity of 36,600 tons per week on the average on a variable schedule for a term ranging from 5 to 15 years, and the other offered coal in the quantity of 3,000 tons a week for terms ranging from 12 to 36 months and both bids dealt with the coal I am talking about and at the price that I referred to. This was No. 9 Pleasantview coal at $2.90 per ton.

4323 Q. Do you recall whether either of those bids were successful?

A. I am quite sure they were not, although I would want to double check that if there is any question about it. The

reason I say I am quite sure they were not is that they kept offering this same coal again until the time in 1961 that the further contract was made that you asked me about in the first instance.

Q. Would you look at the next opening and see if that coal was offered again?

A. Yes, I think this, this is the next one, it was offered apparently for a term of 36 to 60 months, three to five years, in the larger amount, 34,650 tons per week, this time at $3.00 a ton. Why the higher price I don't know. The $2.90 had been unsuccessful, but this is the same coal, apparently. I am speaking now about a bid in September, 1960. Apparently in February, 1960, they offered a range of terms and a range of quantities. In September, 1960, they offered the larger quantity, not the smaller quantities, but again a range of terms from three to five years.

They did vary the term and sometimes the quantity but apparently insistently offered the same quality of coal and I think perhaps this was the only instance when the price was other than $2.90 and this time it was $3.00.

Q. Do you recall whether or not that offering in
4324 September of 1960 was successful?

A. Well, I am sure it wasn't, because it was just about at the very top end pricewise of the list, and I am sure that we didn't buy all of the coal offered or nearly so and wouldn't have included that and again if it had been bought we wouldn't have been offering it again in February of 1961.

Q. Would you consider that the February bid offered that coal for a relatively short term?

A. The February, 1960, that I read here a moment ago, is that the one you are referring to?

Q. Yes.

A. Yes, I should say so. After all, the range was down to 12 months and in February and September down to three years, but particularly in the case of the February,

1960, bid, the offering of the coal for as short as 12 months certainly would be considered a rather short term.

Q. All right, sir. Now, was the $2.90 price for this coal an unusual or attractive price for coal on the TVA market from the standpoint of the TVA?

A. No, it clearly was not very attractive and as evidenced by the fact that it was repeatedly offered without being accepted, accepted in part on rare occasions. The fact of the matter is that this is a rather high price for typically west Kentucky coal or Illinois coal would be any-
4325 where from, oh, under $3.00 down to maybe two and a quarter a ton and more typically it would be better quality coal for the money than this was. This was, as I think I said earlier, was not very attractive coal in terms of quality, even if it had been attractive in terms of price.

Q. Now, I believe you have already explained when this option came about that that was in 1961, is that correct?

A. Yes.

Q. Do you recall for how long a period that option was extended?

A. No, I don't. As I recall, it was offered first for a fairly sizable number of months, then may have been extended. The company had found through experience that it was not having much luck selling the coal elsewhere and so they were quite willing to have that option be fairly long in the hopes that perhaps sometime during the period of the option that TVA might buy it and they would get it sold.

Q. Do you know where that 1961 contract was awarded, at what plant it was sold to?

A. Gallatin, I think, I'm quite sure.

Q. Do you know whether TVA has the right to move the coal to other plants if it chooses to do so?

A. Yes; yes. In this case it could be moved, of course, to any plant served by the railroads that serve us.
4326 I know it was available on the L&N and I think it may

have also been available on the Illinois Central, which would mean that it could be moved to — yes, available on both railroads, which means it could have been shipped to almost any plant in the system.

Q. Mr. Kampmeier, if that coal had been purchased from West Kentucky Coal Company at $2.90 for delivery to Widows Creek and the freight rate that you negotiated in August of 1960, would its delivered cost per million BTU's have been relatively high or low compared to most of the coal TVA has bought for Widows Creek?

A. Well, relatively high because it was evaluated at Widows Creek at the time of his bid there and just to be sure that I am not remembering incorrectly, as I recall, it was evaluated at nearly 21 cents per million BTU, and that was well above the price that the majority of the coal, nearly all coal bought for Widows Creek has been bought, evaluated the cost less than 21, the figure of 20.97.

Q. Is that the evaluated price of that coal at Widows Creek?

A. Right.

Q. Was there an allowance from that for long-term range?

A. Yes, the fact that it was available for a long term under the provisions of that particular bid opening
4327 entitled it to a credit of a half a cent per million BTU, meaning that it would have to compare at 20.47 with the evaluated cost of short-term coal.

Q. Now, would the lowest freight rate, what is the lowest freight rate from west Kentucky, can you tell us?

A. As I recall, $1.40 per ton.

Q. Is that the rate that slides down to that figure depending upon the quantity of coal you get at Bridgeport, Alabama?

A. That is, to the best of my recollection, yes.

Q. Considering the lowest freight rate from western Kentucky and the evaluated cost of that No. 9 coal, what

level of price per ton would be required for southern Tennessee coal to give the same evaluated delivery cost?

A. Well, the $1.40 is correct on the minimum freight rate, is my recollection, that would have lowered the evaluated cost from 20.87 to approximately 20.3 cents per million BTU and according to the figures I have down, if one were to compare that with southern Tennessee coal, of course, it depends on which particular coal from which particular locality mined and of what quality, but taking it, for example, the coal from the Palmer and Whitwell areas, which have been the major shipping points of southern Tennessee coal, of the quality normally offered from those shipping points to evaluate it at 20.3 cents per million BTU

4328 would have a delivered cost at Widows Creek of $5.15 or $5.20 per ton or in terms of the price at the Palmer and Whitwell shipping points about $4.50 to $4.60 a ton.

Q. What factors account for a price of $2.90 at a western Kentucky shipping point being no more attractive to TVA than a shipping point price of $4.50 or $4.60?

A. Well, several. The difference in the freight rates for one, of course, the difference in the quality, for another, and this is the difference not only in BTU per pound but in ash and sulphur content.

We gave the southern Tennessee folks a credit, not only for their better BTU per pound but for the lower ash and sulphur, and this credit also adds in and so that these factors together accounted for the difference.

Q. Are these the factors that you consider in evaluating these various bids?

A. Yes, regularly

Q. Are the prices at which TVA buys coal lower than the average of all coal prices, you take all of the coal that is sold all over the country for any purpose whatsoever, are the prices at which TVA buys coal lower than those average prices?

A. Oh, yes, very definitely.

Q. Why would that be?

A. Well, because the average of coal prices generally includes coal that is sold at higher prices because
4329 of its nature, because of the fact that it is metallurgical coal, for example, that it has to, let's say, have less than one per cent sulphur and has to have certain coking qualities and so on. It includes coal sold in small lots, as well as coal sold in large lots, it is just not comparable.

Q. What about the coal that moves to the utilities generally, how does it compare in price with other coal?

A. Well, this would be much more nearly comparable although here, too, the price that TVA pays on the average would be lower, although, now, let me make this comparison, I would say only modestly lower than the price paid by utilities for similar coal bought from similar fields, bought from the same field, the same kind of coal bought from the same fields in more or less comparable qualities.

Of course, again if you are talking about a very small utility buying a carload at a time I assume the cost would be higher.

Q. Do you have an opinion as to the difference of — first, let me ask you this — you say there is a difference in the average price to TVA that TVA is paying for its coal than other utilities?

A. I would say so, yes.

Q. What would you say that difference is?

A. Well, I estimated from time to time about what
4330 that difference is and have a general figure in mind of about 15 cents a ton. I tried to confirm that by turning to the best available information and that generally supports that statement, I would say. It looks, though, as though maybe my estimate may be a shade on the low side, but not much.

Q. Why does TVA or why is TVA able to obtain coal at a lower price than other utilities on the average?

A. Well, several reasons. First, of course, volume. If we have any success at all in demonstrating to the coal industry that the very large and rapidly growing market

that we are providing would permit them to produce coal at lower cost, and I am sure we did, and I am sure that they show up in the fact, then we should see some benefit of that in our coal cost.

Now, we won't see as much benefit as might appear right on the face of it, because of the fact that once a mine has been developed to produce coal in larger quantities at lower cost they may also begin selling that coal to other power systems as well as us and most mines do and the benefits begin to show up by other power systems, but the fact that we, you might say, were pioneers in this and that we were often the occasion for a mine being developed to produce in bulk at low cost meant that we would get a little advantage here compared to the average and particularly when we consider that the average includes contracts that other companies may have made several years ago
4331 based on less efficient production cost, but that is item one, and I think that because of the fact that the benefit of the mass production does get spread around it isn't too big an item, but that is an item there.

Secondly, the difference in quality that we will accept. We have—I shouldn't say "we," TVA has designed its plants to burn a wider range of quality of coal than the plants of any other power system that I know of, and certainly much wider range than the average power system.

So when you compare the fact that the average power system can't buy certain qualities of coal that TVA can and does buy and can buy at a bargain, this will affect the comparison.

Thirdly, the TVA buys the bulk of its coal directly from producers. I would say that in a very large proportion the coal bought by other power systems is bought through sales agents, who are paid a commission. The commission may be large or small, but it amounts to several cents a ton and in a normal situation this would enter into the picture to the extent that the percentages of coal bought in this way are different. So I think this is an important factor.

The fact that TVA has a system that draws on more coal-fields than any other system I know of I think is important because this means that the proportions of TVA's
4332 coal bought from different fields tends to shift gradually from year to year from time to time as the system grows and develops, depending on what coal is most readily available and abundantly available at an attractive cost. So this tends to reduce the average price paid by TVA as compared to the average utility.

Finally, I think it would be only fair to say that TVA has worked harder than the average utility, I won't say than some, but than the average, good and bad, in trying to develop suitable contracts that coal producers would like to have and would like to bid on and trying to do a planning and buying job that makes the market attractive to the low-cost producers.

I think when you combine all of these factors it is quite reasonable to assume that they should add up to 15 to 20 cents a ton.

Q. What about transportation costs? Does TVA pay less on the average than other power systems for transportation of coal?

A. Yes. Here the difference is greater than on the mine price and the reason that it is greater, the principal reason, is that TVA plants, the TVA system is closer to coal than the average power system in the United States.

When you consider that some power systems have to move coal two or three times as far as TVA does, this
4333 obviously affects the average transportation cost.

If you compare the movement of coal to a TVA plant with a comparable movement of a comparable item of coal for a comparable distance to a plant of another power system, you will find the difference quite often isn't there any more, that the rates are very comparable, but the average is quite a difference.

As I say, the biggest single factor would be the fact that we are nearer coal.

Secondly, the TVA plants, more of them were placed at points in the area of load that would put them close to the coal or close to an economical transportation route to the coal.

TVA would typically have a plant situated where it could be served by at least a couple of modes of transportation and economical transportation. This makes a good deal of difference.

The average power system, unfortunately for it, still has a good proportion of its power production generated by relatively small plants which were located in ways that do not permit very economical transportation to them from the mines, and therefore, they continue to pay a penalty in transportation costs until they finally reach the point where those plants have become absolute, as they are gradually becoming, and have been replaced by more economical sources of generation.

4334 Now, probably the biggest factor that I perhaps haven't mentioned yet, I don't remember mentioning it, is volume of a particular movement. If coal is moved in a large volume movement, then its transportation cost — it might be more or less self-evident — I would be glad to explain them — are a good deal lower than if the coal is moved in smaller lots.

Q. What about the TVA's ability to obtain Section 22 rates, do you think that has a substantial or significant bearing on its transportation costs?

A. I don't think it has any bearing at all. Section 22 of the ICC Act is not something which is used by TVA and the railroads to effect the level of rates. It is something used as a method of quoting the rate.

Under Section 22, I guess, if the railroad wanted to move coal to TVA free they could legally, it wouldn't be illegal to do it, but they don't, we have never suggested that they should.

The point is that in order to have any given rate established, we always found that the essential step is to con-

vince the transportation system that it would be good business to quote such a rate. Good business because it would earn them some tonnage that they might not overwise move and once they are convinced that such a rate is desir-
4335 able and in their interest and good business for them and going to be profitable for them, then the remaining question is: How will the rate be issued? It will be a published quotation so-called, and in the normal sense it will be a Section 22 quotation and there is an advantage for the railroads in terms of speed and simplicity of quotation to quote under Section 22. They don't always choose to do it that way, but this is just — this is just a final detail.

I never, in all of the discussions that I have taken part in with the railroad, I have never heard the question come up of whether a lower rate could be quoted if it were quoted under 22 and if it were quoted at the posted rate.

Q. I take it that you were quite interested in these rates and kept in close contact with them from the various fields serving the TVA plants?

A. Yes.

Q. Mr. Kampmeier, considering the prices of coal which has been delivered to Widows Creek over the years, has there been a substantial variation in that price?

A. No, I would say rather remarkably small variation, everything considered. I took occasion to review the price of coal.

Q. I hand you a paper here and I will ask you if you have prepared this table showing an index of the variation
4336 in prices at Widows Creek?

A. Yes, I did, and this is prepared to show on an index basis the relative pattern, the variations in the price of coal for Widows Creek and at Widows Creek for the TVA system as a whole and for the power systems of the United States as a whole.

Q. All right, sir. Will you tell us from what sources you obtained the figures shown on that chart?

A. Yes. The figures for the United States were taken from the figures published by the U. S. Bureau of Mines in their Minerals Yearbook. As to the prices paid, average prices paid by utilities for coal delivered to their power plants, this data is accumulated by the Edison Electric Institute, which is a trade association of the power systems, and is published not only in the Minerals Yearbook but in the Edison Electric Institute Statistical Yearbook and other places.

The figures for the TVA system and Widows Creek were taken from the TVA data that I had in my possession and most of it can also be obtained from the figures of the TVA Annual Report.

Q. All right, sir.

Mr. Rowntree: Have these been checked against the term awards, average term awards at Widows Creek?

Mr. Rayson: The witness has explained his source.

Mr. Rowntree: We object to it. The best evidence is the term awards.

4337 By Mr. Rayson:

Q. What do the Annual Reports show with respect to Widows Creek?

A. They show the average cost of all coal burned at Widows Creek and the average cost of all coal received, the difference being that most of the reports show both figures, they show it only one figure or the other. The average of the costs when the coal is received is the price at the plant, including mine price of coal plus transportation plus unloading and handling and some mining costs and refers to the total coal received during the course of the fiscal year.

The average cost burned is the average figure differing principally on two accounts. One, that the quantity of coal burned during the year is not the same as the quantity of coal received during the year, some coal may be coming in or out of the stockpile and I used the figures of the coal, I used the figures of coal burned. Actually I think I will verify that but I think that is correct, yes.